



## 2011 CHAPTER 6

### **PART 1**

#### **GAS**

##### *Standards of performance*

##### **Standards of performance in individual cases**

**1.—**(1) The Authority may, with the consent of the Department, make regulations prescribing such standards of performance in connection with—

- (a) the activities of gas suppliers, so far as affecting customers or potential customers of theirs, as in the Authority's opinion ought to be achieved in individual cases; and
- (b) the activities of gas conveyors, so far as affecting customers or potential customers of gas suppliers, as in the Authority's opinion ought to be achieved in individual cases.

(2) A gas supplier or gas conveyor who fails to meet a prescribed standard shall make to any customer or potential customer of a gas supplier who is affected by the failure and is of a prescribed description such compensation as may be determined by or under the regulations.

(3) The regulations may—

- (a) prescribe circumstances in which—
  - (i) gas suppliers are to inform customers or potential customers of their rights under this section;
  - (ii) gas conveyors are to inform customers or potential customers of gas suppliers of their rights under this section;

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- (b) prescribe such standards of performance in relation to any duty arising under paragraph (a) as, in the Authority's opinion, ought to be achieved in all cases;
  - (c) make provision as to the manner in which compensation under this section is to be made;
  - (d) prescribe circumstances in which gas suppliers or gas conveyors are to be exempted from any requirements of the regulations or this section; and
  - (e) if the Authority is of the opinion that the differences are such that no gas supplier or gas conveyor would be unduly disadvantaged in competing with other gas suppliers or (as the case may be) other gas conveyors, make different provision with respect to different gas suppliers or different gas conveyors.
- (4) Provision made under subsection (3)(c) may—
- (a) require or permit compensation to be made on behalf of gas conveyors by gas suppliers to customers or potential customers;
  - (b) require gas suppliers to provide services to gas conveyors in connection with the making of compensation under this section.
- (5) The making of compensation under this section in respect of any failure to meet a prescribed standard shall not prejudice any other remedy which may be available in respect of the act or omission which constituted that failure.
- (6) In this section “prescribed” means prescribed by regulations made under this section.

### **Standards of performance in individual cases: disputes**

2.—(1) Any dispute arising under section 1 or regulations made under that section—

[<sup>F1</sup>(a) may be referred to the Authority by either party or, with the agreement of either party, by the General Consumer Council, and such a reference shall be accompanied by such information as is necessary or expedient to allow a determination to be made in relation to the dispute; and]

(b) on such a reference, shall be determined by order made by the Authority.

(2) The Authority shall include in the order its reasons for reaching its decision with respect to the dispute.

(3) [<sup>F2</sup>Subject to subsection (3A), the practice and procedure] to be followed in connection with any such determination shall be such as may be prescribed by regulations made by the Department.

[<sup>F3</sup>(3A) The procedures established under subsection (3) shall provide for the determination of the dispute to be notified to the party making the reference within the requisite period or such longer period as the Authority may agree with that person.

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(3B) For the purposes of subsection (3A) the requisite period in any case means—

- (a) the period of 2 months from the date when the dispute was referred to the Authority; or
- (b) where the information sent to the Authority under subsection (1)(a) was in its opinion insufficient to enable it to make a determination, the period of 4 months from the date the dispute was referred to the Authority.]

(4) An order under subsection (1) shall be final and shall be enforceable as if it were a judgment of a county court.

#### **Textual Amendments**

- F1** S. 2(1)(a) substituted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 9(2)**
- F2** Words in s. 2(3) substituted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 9(3)**
- F3** S. 2(3A)(3B) inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 9(4)**

### **Overall standards of performance**

3.—(1) The Authority may from time to time determine—

- (a) such standards of overall performance in connection with the provision of gas supply services by gas suppliers as, in its opinion, ought to be achieved by them; and
- (b) such standards of overall performance in connection with the activities of gas conveyors as, in its opinion, ought to be achieved by them.

(2) The Authority may arrange for the publication, in such form and in such manner as it considers appropriate, of the standards determined under subsection (1).

(3) Different standards may be determined for different gas suppliers and different gas conveyors if the Authority is of the opinion that the differences are such that no gas supplier or gas conveyor would be unduly disadvantaged in competing with other gas suppliers or (as the case may be) other gas conveyors.

(4) It shall be the duty of every gas supplier and every gas conveyor to conduct business in such a way as can reasonably be expected to lead to the achievement by that gas supplier or gas conveyor of the standards set under this section.

### **Procedures for determining standards of performance**

4.—(1) Before prescribing standards of performance in regulations under section 1 the Authority shall—

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- (a) arrange for such research as the Authority considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected and consider the results; and
  - (b) consult such persons or bodies as appear to the Authority to be representative of persons likely to be affected.
- (2) Before determining standards of performance under section 3, the Authority shall—
- (a) arrange for such research as the Authority considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected and consider the results;
  - (b) publish a notice of its proposals in accordance with subsections (3) and (4) and consider any representations which are duly made in respect of those proposals; and
  - (c) consult the General Consumer Council and other persons or bodies mentioned in subsection (5).
- (3) The notice required by subsection (2)(b) is a notice—
- (a) stating that the Authority proposes to determine standards of performance and setting out the standards of performance proposed;
  - (b) stating the reasons why it proposes to determine those standards of performance; and
  - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations with respect to the proposals may be made.
- (4) A notice required by subsection (2)(b) shall be published in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of those likely to be affected by the proposals.
- (5) The persons or bodies to be consulted by the Authority under subsection (2)(c) are—
- (a) gas suppliers (in the case of standards of performance under section 3(1)(a)) or gas conveyors and gas suppliers (in the case of standards of performance under section 3(1)(b)); and
  - (b) persons or bodies appearing to the Authority to be representative of persons likely to be affected by the determination.
- (6) The Authority shall make arrangements for securing that notices under subsection (2)(b) and determinations under section 3 are made available to the public by whatever means it considers appropriate.
- (7) Any requirement for research or consultation under this section may be satisfied by research or consultation carried out in anticipation of its coming into operation.

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### **Standards for promoting efficient use of gas**

5.—(1) The Authority may, after consulting gas suppliers and persons or bodies appearing to the Authority to be representative of persons likely to be affected, from time to time—

- (a) determine such standards of performance in connection with the promotion of the efficient use of gas by consumers as, in the Authority's opinion, ought to be achieved by gas suppliers; and
- (b) arrange for the publication, in such form and in such manner as the Authority considers appropriate, of the standards so determined.

(2) Different standards may be determined for different gas suppliers if the Authority is of the opinion that the differences are such that no gas supplier would be unduly disadvantaged in competing with other gas suppliers.

(3) Each gas supplier shall, in such form and manner and with such frequency as the Authority may direct, take steps to inform the customers of the supplier of—

- (a) the standards determined under this section which are applicable to that supplier; and
- (b) that supplier's level of performance as respects those standards.

### **Information with respect to levels of performance**

6.—(1) The Authority shall from time to time collect information with respect to—

- (a) the compensation made by gas suppliers and gas conveyors under section 1;
- (b) the levels of overall performance achieved by gas suppliers and gas conveyors;
- (c) the levels of performance achieved by gas suppliers in connection with the promotion of the efficient use of gas by consumers.

(2) At such times as may be specified in a direction given by the Authority, each gas supplier and gas conveyor shall give the following information to the Authority—

- (a) as respects each standard prescribed by regulations under section 1, the number of cases in which compensation was made and the aggregate amount or value of that compensation; and
- (b) as respects each standard determined under section 3, such information with respect to the level of performance achieved by the gas supplier or gas conveyor as the Authority may direct.

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(3) A gas supplier or gas conveyor who without reasonable excuse fails to do anything required by subsection (2) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) The Authority shall at least once in every year arrange for the publication, in such form and in such manner as it considers appropriate, of such of the information collected by or given to it under this section as it may appear to the Authority expedient to give to customers or potential customers of gas suppliers.

(5) In arranging for the publication of any such information the Authority shall have regard to the need for excluding, so far as that is practicable—

- (a) any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that individual; and
- (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that body.

#### **Information to be given to customers about overall performance**

7.—(1) Each gas supplier and each gas conveyor shall, in such form and manner and with such frequency as the Authority may direct, take steps to inform the customers of gas suppliers of—

- (a) the standards of overall performance determined under section 3 which are applicable to that gas supplier or gas conveyor; and
- (b) the levels of performance achieved by that gas supplier or gas conveyor as respects each of those standards.

(2) In giving any such direction, the Authority shall not specify a frequency of less than once in every period of 12 months.

#### **Procedures for dealing with complaints**

8.—(1) Each gas supplier shall establish a procedure for dealing with complaints made by customers or potential customers of the supplier in connection with the provision of gas supply services.

(2) No such procedure shall be established, and no modification of such a procedure shall be made, unless—

- (a) the gas supplier has consulted the General Consumer Council; and
- (b) the proposed procedure or modification has been approved by the Authority.

(3) The gas supplier shall—

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- (a) publicise the procedure in such manner as may be approved by the Authority; and
  - (b) send a description of the procedure, free of charge, to any person who asks for one.
- (4) The Authority may give a direction to any gas supplier requiring the supplier to review the procedure or the manner in which it operates.
- (5) A direction under subsection (4)—
- (a) may specify the manner in which the review is to be conducted; and
  - (b) shall require a written report of the review to be made to the Authority.
- (6) Where the Authority receives a report under subsection (5)(b), it may, after consulting the gas supplier, direct the supplier to make such modifications of—
- (a) the procedure; or
  - (b) the manner in which the procedure operates,
- as may be specified in the direction.
- (7) Subsection (2) does not apply to any modification made in compliance with a direction under subsection (6).

#### **Amendments to Energy Order relating to standards of performance**

9.—(1) The Energy (Northern Ireland) Order 2003 (NI 6) is amended as follows.

(2) In Article 14 (principal objective and general duties in relation to gas) in paragraph (6)(b) after “this Order” insert “ or the Energy Act (Northern Ireland) 2011 ”.

(3) In Article 41(2) (definitions for purposes of enforcement provisions) in the definition of “relevant requirement” for sub-paragraph (b) substitute—

- “(b) in relation to a gas licence holder, any duty or other requirement imposed on him by or under—
- (i) any of sections 3(4), 5(3), 7 or 8 of the Energy Act (Northern Ireland) 2011; or
  - (ii) an order under Article 27(4)(b).”.

(4) In Article 45(2) (penalty for failure of electricity supplier to achieve standard of performance)—

- (a) after “is satisfied” insert “ (a) ”; and
- (b) after “Electricity Order” insert “or
  - (b) that a gas licence holder has failed or is failing to achieve any standard of performance prescribed under section 1 of the Energy Act (Northern Ireland) 2011,”.

(5) In Article 51(1) (power to require in “or

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- (c) (in the case of a gas licence holder) may be failing or may have failed to achieve any standard of performance prescribed under section 1 of the Energy Act (Northern Ireland) 2011,”.



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