



# Energy Act (Northern Ireland) 2011

## 2011 CHAPTER 6

An Act to make further provision in connection with the regulation of the gas and electricity industries. [10th February 2011]

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

### 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

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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;

(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—

(a) may be referred to the Authority by either party or, with the agreement of either party, by the General Consumer Council; 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.

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(3) 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.

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

### **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—

- (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

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- (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.

### **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.

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(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.

(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

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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—

- (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.

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(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

(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,”.

### *Miscellaneous*

### **Damage to gas plant**

**10.—**(1) A person who intentionally or recklessly—

(a) damages or allows to be damaged any gas plant provided by a gas conveyor;

(b) alters the index to any meter used for measuring the quantity of gas conveyed or supplied by a gas conveyor or gas supplier; or

(c) prevents any such meter from duly registering the quantity of gas conveyed or supplied,

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shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Where an offence has been committed under subsection (1)(a) by the occupier of any premises (or by the owner of the premises if they are unoccupied when the offence is committed) in relation to any gas plant provided by a gas conveyor for making or maintaining a connection to the premises, the gas conveyor may disconnect the premises.

(3) Where an offence has been committed under subsection (1), in relation to a gas meter provided by a gas conveyor which is situated on any premises, by the occupier (or by the owner of the premises if they are unoccupied when the offence is committed), the gas conveyor may disconnect the premises and may remove the meter.

(4) A meter removed under subsection (3) shall be kept safely by the gas conveyor until the Authority authorises its destruction, disposal or repair.

### **Exemption of gas plant from certain processes**

**11.—**(1) Any gas plant owned by or let for hire or lent to a customer by a relevant licence holder and marked or impressed with a sufficient mark or brand indicating that licence holder as the owner thereof—

- (a) shall continue to be the property of that licence holder notwithstanding that it may be fixed or fastened to any part of the premises in which it may be situated;
- (b) shall be exempt from seizure under the Judgments Enforcement (Northern Ireland) Order 1981 (NI 6);
- (c) shall not be taken in execution under proceedings in bankruptcy against the person in whose possession it may be.

(2) In subsection (1) “a relevant licence holder” means—

- (a) a gas conveyor; or
- (b) a gas supplier.

### **Deemed contracts for supply in certain cases**

**12.—**(1) Where a gas supplier supplies gas to a consumer otherwise than in pursuance of a contract, the supplier shall be deemed to have contracted with the consumer for the supply of gas as from the time (“the relevant time”) when the supplier began so to supply gas to the consumer.

(2) Where—

- (a) the owner or occupier of any premises takes a supply of gas which has been conveyed to those premises by a gas conveyor;



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(b) that supply is not made by a gas supplier or pursuant to an exemption under Article 7 of the Gas Order; and

(c) a supply of gas so conveyed has been previously made by a gas supplier, the owner or occupier shall be deemed to have contracted with the appropriate supplier for the supply of gas as from the time (“the relevant time”) when the owner or occupier began to take such a supply.

(3) Nothing in subsection (2) shall be taken to afford a defence in any criminal proceedings.

(4) The Authority shall publish a document containing provision for determining the “appropriate supplier” for the purposes of subsection (2) and may revise any such document published by it and where it does so it shall publish the revised document.

(5) The express terms and conditions of a contract which, by virtue of subsection (1) or (2), is deemed to have been made shall be provided for by a scheme made under this section.

(6) Each gas supplier shall make, and from time to time revise, a scheme for determining the terms and conditions which are to be incorporated in the contracts which, by virtue of subsection (1) or (2), are to be deemed to have been made.

(7) The terms and conditions so determined may include terms and conditions for enabling the gas supplier to determine, in any case where the meter is not read immediately before the relevant time, the quantity of gas which is to be treated as supplied to the consumer, or taken by the owner or occupier of the premises, during the period beginning with the relevant time and ending with—

(a) the time when the meter is first read after the relevant time; or

(b) the time when the supplier ceases to supply gas to the consumer, or the owner or occupier ceases to take a supply of gas,

whichever is the earlier.

(8) A scheme under this section may make different provisions for different cases or classes of cases, or for different areas, determined by, or in accordance with, the provisions of the scheme.

(9) As soon as practicable after a gas supplier makes a scheme under this section, or a revision of such a scheme, the supplier shall—

(a) publish, in such manner as the supplier considers appropriate for bringing it to the attention of persons likely to be affected by it, a notice stating the effect of the scheme or revision;

(b) send a copy of the scheme or revision to the Authority and to the General Consumer Council; and

(c) if so requested by any other person, send such a copy to that person without charge.

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### **Modification of conditions of gas supply licences in relation to deemed contracts**

**13.**—(1) Where the Authority considers it appropriate to do so in connection with the provision made by section 12, it may, with the consent of the Department, make—

- (a) modifications of the conditions of a gas supply licence held by a particular person;
- (b) modifications of the standard conditions of gas supply licences.

(2) The power to make modifications under this section includes power to make incidental, consequential or transitional modifications.

(3) Before making a modification under this section, the Authority must consult—

- (a) the holder of any licence being modified; and
- (b) such other persons as the Authority considers appropriate.

(4) Subsection (3) may be satisfied by consultation that took place wholly or partly before the commencement of this section.

(5) The Authority must publish every modification made by it under this section.

(6) The publication must be in such manner as the Authority considers appropriate.

(7) A modification under subsection (1)(a) of part of a standard condition of a gas supply licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of the Gas Order.

(8) Where the Authority makes modifications under subsection (1)(b) of the standard conditions of gas supply licences, the Authority must—

- (a) make (as nearly as may be) the same modifications of those standard conditions for the purposes of their incorporation in gas supply licences granted after that time; and
- (b) publish the modifications in such manner as it considers appropriate.

(9) The Authority's powers under this section are exercisable only during the 18 months beginning with the commencement of this section.

(10) In this section “gas supply licence” means a licence under Article 8(1) (c) of the Gas Order.

### **Powers of entry**

**14.**—(1) Any person authorised by a gas conveyor may at all reasonable times enter any premises to which gas is conveyed by that gas conveyor for the purpose of—

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- (a) inspecting the gas system or any gas fittings on the premises;
- (b) removing, inspecting or re-installing any gas meter or installing any substitute meter.

(2) Where a gas conveyor is authorised by section 10—

- (a) to disconnect any premises; or
- (b) to remove a gas meter,

any person authorised by the gas conveyor may at all reasonable times enter the premises for the purpose of disconnecting the premises or removing the meter.

(3) Where—

- (a) a gas conveyor is authorised by any provision of the Gas Order or of regulations made under it to disconnect any premises;
- (b) a person occupying premises which are connected to a distribution system of the gas conveyor ceases to require a connection; or
- (c) a person entering into occupation of any premises connected to a distribution system of a gas conveyor does not require such a connection,

any person authorised by the gas conveyor may at all reasonable times enter the premises for the purpose of disconnecting the premises or removing any gas plant provided by the gas conveyor.

(4) Any person authorised by a gas conveyor may at all reasonable times enter any premises for the purpose of placing any new gas plant in the place of or in addition to any existing plant which has already been lawfully placed.

(5) Any person authorised by a gas supplier may at all reasonable times enter any premises to which gas is conveyed by a gas conveyor for the purpose of—

- (a) ascertaining the register of any gas meter; and
- (b) in the case of a pre-payment meter, removing any money or tokens belonging to the supplier.

(6) A power of entry may not be exercised—

- (a) under subsection (1)(b) or (3) unless at least two working days' notice has been given to the occupier (or to the owner of the premises if they are unoccupied);
- (b) under subsection (4) unless at least 5 working days' notice has been given to the occupier (or to the owner of the premises if they are unoccupied).

(7) A person exercising a power of entry under this section must, on request by or on behalf of the owner or occupier of the premises, produce evidence of that person's authority.

(8) Paragraphs 5 to 8 of Schedule 5 to the Gas Order apply in relation to a power of entry conferred by this section as they apply in relation to a power of entry conferred by that Schedule.

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(9) In this section “gas system” and “gas fittings” have the same meanings as in Schedule 5 to the Gas Order.

### **Storage of gas**

**15** In Article 6 of the Gas Order (licences) at the end add—

“(6) For the purposes of this Order a person stores gas in a gas storage facility if (and only if) that person is the operator of that facility.”.

### **Appointment of meter examiners**

**16.**—(1) Article 22 of the Gas Order (meter testing and stamping) is amended as follows.

(2) In paragraphs (2), (7) and (8) omit the words “who are members of the Director's staff”.

## **PART 2**

### **SPECIAL ADMINISTRATION REGIME FOR PROTECTED ENERGY COMPANIES**

#### *Energy administration orders*

### **Energy administration orders**

**17.**—(1) In this Part “energy administration order” means an order which—

- (a) is made by the High Court in relation to a protected energy company; and
- (b) directs that, while the order is in force, the affairs, business and property of the company are to be managed by a person appointed by the Court.

(2) The person appointed in relation to a company for the purposes of an energy administration order is referred to in this Part as the energy administrator of the company.

(3) The energy administrator of a company must manage its affairs, business and property, and exercise and perform all the powers and duties of an energy administrator so as to achieve the objective set out in section 18.

(4) In relation to an energy administration order applying to a non-NI company, references in this section to the affairs, business and property of the company are references only to its affairs and business so far as carried on in Northern Ireland and to its property in Northern Ireland.

(5) In this Part—

“protected energy company” means a company which is the holder of a relevant licence;

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“relevant licence” means—

- (a) a licence granted under Article 10(1)(b) of the Electricity (Northern Ireland) Order 1992 (NI 1) (transmission of electricity);
- (b) a licence granted under Article 8(1)(a) of the Gas Order (conveyance of gas).

### **Objective of an energy administration**

**18.—**(1) The objective of an energy administration is to secure—

- (a) that the company's system is and continues to be maintained and developed as an efficient, economical and co-ordinated system; and
- (b) that it becomes unnecessary, by one or both of the following means, for the energy administration order to remain in force for that purpose.

(2) Those means are—

- (a) the rescue as a going concern of the company subject to the energy administration order; and
- (b) transfers falling within subsection (3).

(3) A transfer falls within this subsection if it is a transfer as a going concern—

- (a) to another company, or
- (b) as respects different parts of the undertaking of the company subject to the energy administration order, to two or more different companies,

of so much of that undertaking as it is appropriate to transfer for the purpose of achieving the objective of the energy administration.

(4) The means by which transfers falling within subsection (3) may be effected include, in particular—

- (a) a transfer of the undertaking of the company subject to the energy administration order, or of a part of its undertaking, to a wholly-owned subsidiary of that company; and
- (b) a transfer to a company of securities of a wholly-owned subsidiary to which there has been a transfer falling within paragraph (a).

(5) The objective of an energy administration may be achieved by transfers falling within subsection (3) to the extent only that—

- (a) the rescue as a going concern of the company subject to the energy administration order is not reasonably practicable or is not reasonably practicable without such transfers;
- (b) the rescue of that company as a going concern will not achieve that objective or will not do so without such transfers;
- (c) such transfers would produce a result for the company's creditors as a whole that is better than the result that would be produced without them; or

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- (d) such transfers would, without prejudicing the interests of those creditors as a whole, produce a result for the company's members as a whole that is better than the result that would be produced without them.

(6) In this section “the company's system”, in relation to an energy administration, means—

- (a) the system of electricity transmission or of electricity distribution, or
- (b) the pipe-line system for the conveyance of gas,

which the company subject to the energy administration order has been maintaining as the holder of a relevant licence.

### **Applications for energy administration orders**

**19.—**(1) An application for an energy administration order in relation to a company may be made only—

- (a) by the Department; or
- (b) with the consent of the Department, by the Authority.

(2) The applicant for an energy administration order in relation to a company must give notice of the application to—

- (a) every person who has appointed an administrative receiver of the company;
- (b) every person who is or may be entitled to appoint an administrative receiver of the company;
- (c) every person who is or may be entitled to make an appointment in relation to the company under paragraph 15 of Schedule B1 to the Insolvency Order (appointment of administrators by holders of floating charges); and
- (d) such other persons as may be prescribed by energy administration rules.

(3) The notice must be given as soon as reasonably practicable after the making of the application.

(4) In this section “administrative receiver” means—

- (a) an administrative receiver within the meaning given by Article 5 of the Insolvency Order for the purposes of Parts 2 to 7 of that Order; or
- (b) a person whose functions in relation to a non-NI company—
  - (i) are equivalent to those of an administrative receiver; and
  - (ii) relate only to the affairs and business of the company so far as carried on in Northern Ireland and to its property in Northern Ireland.

### **Powers of court**

**20.—**(1) On hearing an application for an energy administration order, the High Court has the following powers—

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- (a) it may make the order;
- (b) it may dismiss the application;
- (c) it may adjourn the hearing conditionally or unconditionally;
- (d) it may make an interim order;
- (e) it may treat the application as a winding-up petition and make any order the Court could make under Article 105 of the Insolvency Order (power of Court on hearing winding-up petition);
- (f) it may make any other order which the Court thinks appropriate.

(2) The High Court may make an energy administration order in relation to a company only if it is satisfied—

- (a) that the company is unable to pay its debts;
- (b) that it is likely to be unable to pay its debts; or
- (c) that, on a petition by the Department under Article 104A of the Insolvency Order (petition for winding up on grounds of public interest), it would be just and equitable (disregarding the objective of the energy administration) to wind up the company in the public interest.

(3) The High Court must not make an energy administration order in relation to a company on the ground set out in subsection (2)(c) unless the Department has certified to the Court that the case is one in which it considers (disregarding the objective of the energy administration) that it would be appropriate for the Department to petition under Article 104A of the Insolvency Order.

(4) The High Court has no power to make an energy administration order in relation to a company which—

- (a) is in administration under Schedule B1 to the Insolvency Order; or
- (b) has gone into liquidation (within the meaning of Article 6(2) of that Order).

(5) An energy administration order comes into force—

- (a) at the time appointed by the High Court; or
- (b) if no time is so appointed, when the order is made.

(6) An interim order under subsection (1)(d) may, in particular—

- (a) restrict the exercise of a power of the company or of its directors; or
- (b) make provision conferring a discretion on a person qualified to act as an insolvency practitioner in relation to the company.

(7) Where the company in relation to which an application is made is a non-NI company, the reference in subsection (6)(a) to restricting the exercise of a power of the company or of its directors is a reference only to restricting the exercise of such a power—

- (a) within Northern Ireland; or

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- (b) in relation to the company's affairs or business so far as carried on in Northern Ireland, or to its property in Northern Ireland.
- (8) For the purposes of this section a company is unable to pay its debts if—
  - (a) it is a company which is deemed to be so unable under Article 103 of the Insolvency Order (definition of inability to pay debts); or
  - (b) it is an unregistered company which is deemed, by virtue of any of Articles 186 to 188 of that Order, to be so unable for the purposes of Article 185 of that Order (winding up of unregistered companies), or which would be so deemed if it were an unregistered company for the purposes of those Articles.

### **Energy administrators**

**21.—**(1) The energy administrator of a company—

- (a) is an officer of the High Court; and
- (b) in exercising and performing the powers and duties of an energy administrator in relation to the company, is the company's agent.

(2) The management by the energy administrator of a company of any affairs, business or property of the company must be carried out for the purpose of achieving the objective of the energy administration as quickly and as efficiently as is reasonably practicable.

(3) The energy administrator of a company must exercise and perform the powers and duties of an energy administrator in the manner which, so far as it is consistent with the objective of the energy administration to do so, best protects—

- (a) the interests of the creditors of the company as a whole; and
- (b) subject to those interests, the interests of the members of the company as a whole.

(4) A person is not to be the energy administrator of a company unless that person is qualified to act as an insolvency practitioner in relation to the company.

(5) Where the High Court makes an appointment in a case in which two or more persons will be the energy administrator of a company after the appointment, the appointment must set out—

- (a) which (if any) of the powers and duties of an energy administrator are to be exercisable or performed only by those persons acting jointly;
- (b) the circumstances (if any) in which powers and duties of an energy administrator are to be exercisable, or may be performed, by one of the persons appointed to be the energy administrator, or by particular appointees, acting alone; and



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- (c) the circumstances (if any) in which things done in relation to one of the persons appointed to be the energy administrator, or in relation to particular appointees, are to be treated as done in relation to all of them.

### **Conduct of administration, transfer schemes etc.**

**22.—**(1) The Department may by regulations—

- (a) make provision for applying provisions of the Insolvency Order (with or without modifications) in relation to an energy administration order or an application for such an order;
- (b) make consequential or supplementary provision (including provision modifying other statutory provisions) in relation to energy administration orders.

(2) The Schedule (which makes provision for transfer schemes to achieve the objective of an energy administration) has effect.

(3) The power to make rules conferred by Article 359 of the Insolvency Order (insolvency rules) shall apply for the purpose of giving effect to this Part as it applies for the purpose of giving effect to that Order and, accordingly, as if references in that Article to that Order included references to this Part.

### *Restrictions on other insolvency procedures*

### **Restrictions on winding-up orders**

**23.—**(1) This section applies where a petition for the winding up of a protected energy company is presented by a person other than the Department.

(2) The High Court is not to exercise its powers on a winding-up petition unless—

- (a) notice of the petition has been served both on the Department and on the Authority; and
- (b) a period of at least 14 days has elapsed since the service of the last of those notices to be served.

(3) If an application for an energy administration order in relation to the company is made to the High Court in accordance with section 19(1) before a winding-up order is made on the petition, the Court may exercise its powers under section 20, instead of exercising its powers on a winding-up petition.

(4) References in this section to the High Court's powers on a winding-up petition are references to—

- (a) its powers under Article 105 of the Insolvency Order (other than its power of adjournment); and
- (b) its powers under Article 115 of that Order.

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### **Restrictions on voluntary winding up**

**24.—**(1) A protected energy company has no power to pass a resolution for voluntary winding up without the permission of the High Court.

(2) Such permission may be granted only on an application made by the company.

(3) The High Court is not to grant permission on such an application unless—

- (a) notice of the application has been served both on the Department and on the Authority; and
- (b) a period of at least 14 days has elapsed since the service of the last of those notices to be served.

(4) If an application for an energy administration order in relation to the company is made to the High Court in accordance with section 19(1) after an application for permission under this section has been made and before it is granted, the Court may exercise its powers under section 20 instead of granting permission.

(5) In this section “a resolution for voluntary winding up” has the same meaning as in the Insolvency Order.

### **Restrictions on making ordinary administration orders**

**25.—**(1) This section applies where an ordinary administration application is made in relation to a protected energy company by a person other than the Department.

(2) The High Court must dismiss the application if—

- (a) an energy administration order is in force in relation to the company; or
- (b) an energy administration order has been made in relation to the company but is not yet in force.

(3) Where subsection (2) does not apply, the High Court, on hearing the application, must not exercise its powers under paragraph 14 of Schedule B1 to the Insolvency Order (other than its power of adjournment) unless—

- (a) notice of the application has been served both on the Department and on the Authority;
- (b) a period of at least 14 days has elapsed since the service of the last of those notices to be served; and
- (c) there is no application for an energy administration order that is outstanding.

(4) Paragraph 45 of Schedule B1 to the Insolvency Order (interim moratorium) does not prevent, or require the permission of the High Court for, the making of an application for an energy administration order.

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(5) Upon the making of an energy administration order in relation to a protected energy company, the High Court must dismiss any ordinary administration application made in relation to that company which is outstanding.

(6) In this section “ordinary administration application” means an application in accordance with paragraph 13 of Schedule B1 to the Insolvency Order.

### **Restrictions on administrator appointments by creditors etc.**

**26.—**(1) No step is to be taken by any person to make an appointment in relation to a company under paragraph 15 or 23 of Schedule B1 to the Insolvency Order (powers of holder of floating charge and of the company itself and of its directors to appoint administrators) if—

- (a) an energy administration order is in force in relation to the company;
- (b) an energy administration order has been made in relation to the company but is not yet in force; or
- (c) an application for such an order is outstanding.

(2) In the case of a protected energy company to which subsection (1) does not apply, an appointment in relation to that company under paragraph 15 or 23 of Schedule B1 to the Insolvency Order takes effect only if each of the conditions mentioned in subsection (3) is met.

(3) Those conditions are—

- (a) that a copy of every document in relation to the appointment that is filed or lodged with the High Court in accordance with paragraph 19 or 30 of Schedule B1 to the Insolvency Order (documents to be filed or lodged for appointment of administrator) has been served both on the Department and on the Authority;
- (b) that a period of 14 days has elapsed since the service of the last of those copies to be served;
- (c) that there is no outstanding application to the High Court for an energy administration order in relation to the company in question; and
- (d) that the making of an application for such an order has not resulted in the making of an energy administration order which is in force or is still to come into force.

(4) Paragraph 45 of Schedule B1 to the Insolvency Order (interim moratorium) does not prevent, or require the permission of the High Court for, the making of an application for an energy administration order at any time before the appointment takes effect.

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### **Restrictions on enforcement of security**

**27.—**(1) No step to enforce a security over property of a protected energy company is to be taken by any person, unless—

- (a) notice of intention to do so has been served both on the Department and on the Authority; and
- (b) a period of at least 14 days has elapsed since the service of the last of those notices to be served.

(2) In the case of a protected energy company which is a non-NI company, the reference in subsection (1) to the property of the company is a reference only to its property in Northern Ireland.

### *Financial support for company in administration*

### **Grant and loans**

**28.—**(1) This section applies where an energy administration order has been made in relation to a company.

(2) The Department may make grants or loans to the company of such amounts as appear to the Department appropriate to pay or lend for achieving the objective of the energy administration.

(3) A grant or loan under this section may be made in whatever manner, and on whatever terms, the Department considers appropriate.

(4) The terms on which a grant may be made under this section include, in particular, terms requiring the whole or a part of the grant to be repaid to the Department if there is a contravention of the other terms on which the grant is made.

(5) The terms on which a loan may be made under this section include, in particular, terms requiring—

- (a) the loan to be repaid at such times and by such methods, and
- (b) interest to be paid on the loan at such rates and at such times,

as the Department may from time to time direct.

(6) The consent of the Department of Finance and Personnel is required—

- (a) for the making of a grant or loan under this section; and
- (b) for the giving by the Department of a direction under subsection (5).

### **Indemnities**

**29.—**(1) This section applies where an energy administration order has been made in relation to a company.

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(2) The Department may agree to indemnify persons in respect of one or both of the following—

- (a) liabilities incurred in connection with the exercise and performance by the energy administrator of the powers and duties of an energy administrator; and
- (b) loss or damage sustained in that connection.

(3) The agreement may be made in whatever manner, and on whatever terms, the Department considers appropriate.

(4) If sums are paid by the Department in consequence of an indemnity agreed to under this section, the company must pay to the Department—

- (a) such amounts in or towards the repayment to the Department of those sums as the Department may direct; and
- (b) interest, at such rates as the Department may direct, on amounts outstanding under this subsection.

(5) Payments to the Department under subsection (4) must be made at such times and in such manner as the Department may determine.

(6) Subsection (4) does not apply in the case of a sum paid by the Department for indemnifying a person in respect of a liability to the company in relation to which the energy administration order was made.

(7) The consent of the Department of Finance and Personnel is required—

- (a) for the doing of anything by the Department under subsection (2);
- (b) for the giving by the Department of any direction under subsection (4); and
- (c) for the making of a determination under subsection (5).

(8) The power of the Department to agree to indemnify persons—

- (a) is confined to a power to agree to indemnify persons in respect of liabilities, loss and damage incurred or sustained by them as relevant persons; but
- (b) includes power to agree to indemnify persons (whether or not they are identified or identifiable at the time of the agreement) who subsequently become relevant persons.

(9) A person is a relevant person for the purposes of this section if that person is—

- (a) the energy administrator;
- (b) an employee of the energy administrator;
- (c) a member or employee of a firm of which the energy administrator is a member;
- (d) a member or employee of a firm of which the energy administrator is an employee;

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- (e) a member of a firm of which the energy administrator was an employee or member at a time when the order was in force;
  - (f) a body corporate which is the employer of the energy administrator;
  - (g) an officer, employee or member of such a body corporate.
- (10) For the purposes of subsection (9)—
- (a) the references to the energy administrator are to be construed, where two or more persons are appointed to act as the energy administrator, as references to any one or more of them; and
  - (b) the references to a firm of which a person was a member or employee at a particular time include references to a firm which holds itself out to be the successor of a firm of which that person was a member or employee at that time.

### Guarantees

**30.—**(1) This section applies where an energy administration order has been made in relation to a company.

(2) The Department may guarantee—

- (a) the repayment of any sum borrowed by the company while the energy administration order is in force;
- (b) the payment of interest on such a sum; and
- (c) the discharge of any other financial obligation of the company in connection with the borrowing of such a sum.

(3) The Department may give a guarantee under this section in such manner, and on such terms, as the Department thinks fit.

(4) As soon as practicable after giving a guarantee under this section, the Department must lay a statement of the guarantee before the Assembly.

(5) If sums are paid out by the Department under a guarantee given under this section, the company must pay the Department—

- (a) such amounts in or towards the repayment to the Department of those sums as the Department may direct; and
- (b) interest, at such rates as the Department may direct, on amounts outstanding under this subsection.

(6) Payments to the Department under subsection (5) must be made at such times, and in such manner, as the Department may from time to time direct.

(7) Where a sum has been paid out by the Department under a guarantee given under this section, the Department must lay a statement relating to that sum before the Assembly—

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- (a) as soon as practicable after the end of the financial year in which that sum is paid out; and
  - (b) as soon as practicable after the end of each subsequent relevant financial year.
- (8) In relation to a sum paid out under a guarantee, a financial year is a relevant financial year for the purposes of subsection (7) unless—
- (a) before the beginning of that year, the whole of that sum has been repaid to the Department under subsection (5); and
  - (b) the company in question is not at any time during that year subject to liability to pay interest on amounts that became due under that subsection in respect of that sum.
- (9) The consent of the Department of Finance and Personnel is required—
- (a) for the giving of a guarantee under this section; and
  - (b) for the giving by the Department of a direction under subsection (5) or (6).

#### PROSPECTIVE

#### *Licence modifications relating to energy administration*

##### **Modification of particular or standard conditions**

**31.—**(1) Where the Department considers it appropriate to do so in connection with the provision made by this Part, it may make—

- (a) modifications of the conditions of a gas or electricity licence held by a particular person;
- (b) modifications of the standard conditions of such licences of any type.

(2) The power to make modifications under this section includes power to make incidental, consequential or transitional modifications.

(3) Before making a modification under this section, the Department must consult—

- (a) the holder of any licence being modified; and
- (b) such other persons as the Department considers appropriate.

(4) Subsection (3) may be satisfied by consultation that took place wholly or partly before the commencement of this section.

(5) The Department must publish every modification made by it under this section.

(6) The publication must be in such manner as the Department considers appropriate.

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(7) A modification under subsection (1)(a) of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of the Gas Order or the Electricity (Northern Ireland) Order 1992 (NI 1).

(8) Where the Department makes modifications under subsection (1)(b) of the standard conditions of licences of any type, the Authority must—

- (a) make (as nearly as may be) the same modifications of those standard conditions for the purposes of their incorporation in licences of that type granted after that time; and
- (b) publish the modifications in such manner as it considers appropriate.

(9) The Department's powers under this section are exercisable only during the 18 months beginning with the commencement of this section.

(10) In this section—

“electricity licence” means a licence under Article 10 of the Electricity (Northern Ireland) Order 1992;

“gas licence” means a licence under Article 8 of the Gas Order.

### **Licence condition to secure funding of energy administration**

**32.—**(1) The modifications that may be made under section 31 include, in particular, modifications imposing conditions requiring the licence holder (L)

—

- (a) so to modify the charges imposed by L for anything done by L in the carrying on of the licensed activities as to raise such amounts as may be determined by or under the conditions; and
- (b) to pay the amounts so raised to such persons as may be so determined for the purpose of—
  - (i) their applying those amounts in making good any shortfall in the property available for meeting the expenses of an energy administration; or
  - (ii) enabling those persons to secure that those amounts are so applied.

(2) Those modifications may include modifications imposing on L an obligation to apply amounts paid to L in pursuance of conditions falling within subsection (1)(a) or (b) in making good any such shortfall.

(3) For the purposes of this section—

- (a) there is a shortfall in the property available for meeting the costs of an energy administration if, in a case where a company is or has been subject to an energy administration order, the property available (apart from conditions falling within subsection (1) or (2)) for meeting relevant debts is insufficient for meeting them; and



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(b) amounts are applied in making good that shortfall if they are paid in or towards discharging so much of a relevant debt as cannot be met out of the property otherwise available for meeting relevant debts.

(4) In this section “relevant debt”, in relation to a case in which a company is or has been subject to an energy administration order, means an obligation—

- (a) to make payments in respect of the expenses or remuneration of any person as the energy administrator of that company;
- (b) to make a payment in discharge of a debt or liability of that company arising out of a contract entered into at a time when the order was in force by the person who at that time was the energy administrator of that company;
- (c) to repay the whole or a part of a grant made to that company under section 28;
- (d) to repay a loan made to the company under that section, or to pay interest on such a loan;
- (e) to make a payment under section 29(4); or
- (f) to make a payment under section 30(5).

### *Interpretation of Part 2*

#### **Interpretation of Part 2**

**33.—**(1) In this Part—

“the Insolvency Order” means the Insolvency (Northern Ireland) Order 1989 (NI 19);

“business”, “member”, “property” and “security” have the same meanings as in Parts 2 to 7 of the Insolvency Order;

“company” means—

- (a) a company registered under the Companies Act 2006 (c. 46); or
- (b) an unregistered company;

“energy administration order” has the meaning given by section 17(1);

“energy administration rules” means rules made under Article 359 of the Insolvency Order by virtue of section 22(3);

“energy administrator” has the meaning given by section 17(2) and is to be construed in accordance with subsection (2) of this section;

“non-NI company” means a company incorporated outside Northern Ireland;

“objective of the energy administration” is to be construed in accordance with section 18;

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“protected energy company” has the meaning given by section 17(5);

“relevant licence” has the meaning given by section 17(5);

“unregistered company” means a company that is not registered under the Companies Act 2006;

“wholly-owned subsidiary” has the same meaning as in the Companies Act 2006.

(2) In this Part references to the energy administrator of a company—

(a) includes (if paragraph 92 or 104 of Schedule B1 to the Insolvency Order are applied by regulations under section 22(1)) references to a person appointed under either of those paragraphs to be the energy administrator of that company; and

(b) where two or more persons are appointed to be the energy administrator of that company, are to be construed in accordance with the provision made under section 21(5).

(3) References in this Part to a person qualified to act as an insolvency practitioner in relation to a company are to be construed in accordance with Part 12 of the Insolvency Order (insolvency practitioners and their qualifications); but as if references in that Part to a company included references to a company registered under the Companies Act 2006 in Great Britain.

(4) For the purposes of this Part an application made to the High Court is outstanding if it—

(a) has not yet been granted or dismissed; and

(b) has not been withdrawn.

(5) For the purposes of subsection (4) an application is not to be taken as having been dismissed if an appeal against the dismissal of the application, or a subsequent appeal, is pending.

(6) An appeal shall be treated as pending for the purposes of subsection (5) if—

(a) such an appeal has been brought and has been neither determined nor withdrawn;

(b) an application for permission to appeal has been made but has not been determined or withdrawn; or

(c) no such appeal has been brought and the period for bringing an appeal is still running.

(7) References in this Part to Schedule B1 to the Insolvency Order, or to a provision of that Schedule (except the references in subsection (2)), are references to that Schedule or that provision without any modifications made by regulations under section 22(1).

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## PART 3

### SUPPLEMENTARY

#### Regulations

**34.**—(1) Regulations made by the Department under this Act shall be subject to negative resolution.

(2) Regulations made by the Authority under this Act shall—

(a) be laid before the Assembly by the Department; and

(b) be subject to negative resolution.

(3) Regulations under this Act may contain such incidental, supplementary, transitional and savings provisions as appear to the Department or, as the case may be, the Authority to be necessary or expedient.

(4) Paragraphs (4) to (7) of Article 69 of the Gas Order (content of regulations) apply in relation to regulations under this Act as they apply in relation to regulations under that Order.

#### Interpretation

**35.**—(1) In this Act—

“the Authority” means the Northern Ireland Authority for Utility Regulation;

“the Department” means the Department of Enterprise, Trade and Investment;

“gas conveyor” means the holder of a licence under Article 8(1)(a) of the Gas Order;

“gas supplier” means the holder of a licence under Article 8(1)(c) of the Gas Order;

“the Gas Order” means the Gas (Northern Ireland) Order 1996 (NI 2).

(2) Any other word or expression used—

(a) in Part 1, or

(b) in Part 2 (so far as relating to gas),

which is defined in Article 2 or 3 of the Gas Order has the same meaning as in Part 2 of the Gas Order.

#### Commencement

**36.**—(1) The preceding sections of this Act (and the Schedule) come into operation on such day or days as the Department may by order appoint.

(2) An order under subsection (1) may contain such transitional or saving provisions as the Department thinks appropriate.

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#### Subordinate Legislation Made

- P1** [S. 36\(1\)](#) power partly exercised: 21.3.2011 appointed for specified provisions by [S.R. 2011/95, art. 2\(1\)](#)

#### Short title

- 37** This Act may be cited as the Energy Act (Northern Ireland) 2011.

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## SCHEDULE

### ENERGY TRANSFER SCHEMES

#### *Application of Schedule*

**1** This Schedule applies where—

- (a) the High Court has made an energy administration order in relation to a company (the “old energy company”); and
- (b) it is proposed that a transfer falling within section 18(3) be made to another company (the “new energy company”).

**2** It is for the energy administrator, while the energy administration order is in force, to act on behalf of the old energy company in the doing of anything that it is authorised or required to do by or under this Schedule.

#### *Making of energy transfer schemes*

**3.—(1)** The old energy company may—

- (a) with the consent of the new energy company, and
- (b) for the purpose of giving effect to the proposed transfer,

make a scheme under this Schedule for the transfer of property, rights and liabilities from the old energy company to the new energy company (an “energy transfer scheme”).

(2) Such a scheme may be made only at a time when the energy administration order is in force in relation to the old energy company.

(3) An energy transfer scheme may set out the property, rights and liabilities to be transferred in one or more of the following ways—

- (a) by specifying or describing them in particular;
- (b) by identifying them generally by reference to, or to a specified part of, the undertaking of the old energy company; or
- (c) by specifying the manner in which they are to be determined.

(4) An energy transfer scheme shall take effect in accordance with paragraph 8 at the time appointed by the High Court.

(5) But the High Court must not appoint a time for a scheme to take effect unless that scheme has been approved by the Department.

(6) The Department may modify an energy transfer scheme before approving it, but only modifications to which both the old energy company and the new energy company have consented may be made.

(7) In deciding whether to approve an energy transfer scheme, the Department must have regard, in particular, to—

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- (a) the public interest; and
  - (b) the effect the scheme is likely to have (if any) upon the interests of third parties.
- (8) Before approving an energy transfer scheme, the Department must consult the Authority.
- (9) The old energy company and the new energy company each have a duty to provide the Department with all information and other assistance that it may reasonably require for the purposes of, or in connection with, the exercise of the powers conferred on it by this paragraph.

*Provision that may be made by a scheme*

- 4.—(1) An energy transfer scheme may contain provision—
- (a) for the creation, in favour of the old energy company or the new energy company, of an interest or right in or in relation to property transferred in accordance with the scheme;
  - (b) for giving effect to a transfer to the new energy company by the creation, in favour of that company, of an interest or right in or in relation to property retained by the old energy company;
  - (c) for the creation of new rights and liabilities (including rights of indemnity and duties to indemnify) as between the old energy company and the new energy company;
  - (d) in connection with any provision made under this sub-paragraph, provision making incidental provision as to the interests, rights and liabilities of other persons with respect to the property, rights and liabilities to which the scheme relates.
- (2) The property, rights and liabilities of the old energy company that may be transferred in accordance with an energy transfer scheme include—
- (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the old energy company;
  - (b) property acquired, and rights and liabilities arising, in the period after the making of the scheme but before it takes effect;
  - (c) rights and liabilities arising after it takes effect in respect of matters occurring before it takes effect;
  - (d) property situated anywhere in Northern Ireland or elsewhere;
  - (e) rights and liabilities under the law of Northern Ireland or of a place outside Northern Ireland;
  - (f) rights and liabilities under any statutory provision or EU instrument.

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(3) The transfers to which effect may be given by an energy transfer scheme include transfers of interests and rights that are to take effect in accordance with the scheme as if there were—

- (a) no such requirement to obtain a person's consent or concurrence,
- (b) no such liability in respect of a contravention of any other requirement, and
- (c) no such interference with any interest or right,

as there would be, in the case of a transaction apart from this Act, by reason of a provision falling within sub-paragraph (4).

(4) A provision falls within this sub-paragraph to the extent that it has effect (whether under a statutory provision or agreement or otherwise) in relation to the terms on which the old energy company is entitled, or subject, to anything to which the transfer relates.

(5) Sub-paragraph (6) applies where (apart from that sub-paragraph) a person would be entitled, in consequence of anything done or likely to be done by or under this Act in connection with an energy transfer scheme—

- (a) to terminate, modify, acquire or claim an interest or right; or
- (b) to treat an interest or right as modified or terminated.

(6) That entitlement—

- (a) shall not be enforceable in relation to that interest or right until after the transfer of the interest or right by the scheme; and
- (b) shall then be enforceable in relation to the interest or right only in so far as the scheme contains provision for the interest or right to be transferred subject to whatever confers that entitlement.

(7) Sub-paragraphs (3) to (6) have effect where shares in a subsidiary of the old energy company are transferred—

- (a) as if the reference in sub-paragraph (4) to the terms on which the old energy company is entitled or subject to anything to which the transfer relates included a reference to the terms on which the subsidiary is entitled or subject to anything immediately before the transfer takes effect; and
- (b) in relation to an interest or right of the subsidiary, as if the references in sub-paragraph (6) to the transfer of the interest or right included a reference to the transfer of the shares.

(8) Sub-paragraphs (3) and (4) apply to the creation of an interest or right by an energy transfer scheme as they apply to the transfer of an interest or right.

### *Transfer of licences*

**5.—(1)** The provision that may be made by an energy transfer scheme includes the transfer of a licence from the old energy company to the new energy company.

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- (2) Such a transfer may relate to the whole or any part of the licence.
- (3) Where such a transfer relates to a part of the licence, the provision made under sub-paragraph (1) may include—
  - (a) provision apportioning responsibility between the old energy company and the new energy company in relation to—
    - (i) the making of payments required by conditions included in the licence;
    - (ii) ensuring compliance with any other requirements of the conditions included in the licence; and
  - (b) provision making incidental modifications to the terms and conditions of the licence.
- (4) References in this paragraph to a part of a licence are references to one or both of—
  - (a) part of the activities authorised by the licence;
  - (b) a part of the area in relation to which the holder of the licence is authorised to carry on those activities.

*Powers and duties under statutory provisions*

- 6.—**(1) The provision that may be made by an energy transfer scheme includes provision for some or all of the powers and duties to which this paragraph applies—
- (a) to be transferred to the new energy company; or
  - (b) to become powers and duties that are exercisable, or must be performed, concurrently by the old energy company and the new energy company.
- (2) Provision falling within sub-paragraph (1) may apply to powers and duties only in so far as they are exercisable or required to be performed in the area specified or described in the provision.
- (3) The powers and duties to which this paragraph applies are the powers and duties conferred or imposed upon the old energy company by or under a statutory provision, so far as those powers and duties are connected with—
- (a) the undertaking of the old energy company to the extent the energy transfer scheme relates to that undertaking; or
  - (b) any property, rights or liabilities to be transferred in accordance with the scheme.
- (4) The powers and duties mentioned in sub-paragraph (3) include, in particular, powers and duties relating to the carrying out of works or the acquisition of land.



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### *Supplemental provisions relating to transfers*

7.—(1) An energy transfer scheme may make incidental, supplemental, consequential and transitional provision in connection with the other provisions of the scheme.

(2) Such provision may include different provision for different cases or different purposes.

(3) In particular, an energy transfer scheme may make provision, in relation to a provision of the scheme—

- (a) for the new energy company to be treated as the same person in law as the old energy company;
- (b) for agreements made, transactions effected or other things done by or in relation to the old energy company to be treated, so far as may be necessary for the purposes of or in connection with a transfer in accordance with the scheme, as made, effected or done by or in relation to the new energy company;
- (c) for references in an agreement, instrument or other document to the old energy company or to an employee or office holder with the old energy company to have effect, so far as may be necessary for the purposes of or in connection with a transfer in accordance with the scheme, with such modifications as are specified in the scheme;
- (d) that the effect of any transfer in accordance with the scheme in relation to contracts of employment with the old energy company is not to terminate any of those contracts but is to be that periods of employment with that company are to count for all purposes as periods of employment with the new energy company;
- (e) for proceedings commenced by or against the old energy company to be continued by or against the new energy company.

(4) Sub-paragraph (3)(c) does not apply to references in a statutory provision.

(5) An energy transfer scheme may make provision for disputes as to the effect of the scheme between the old energy company and the new energy company to be referred to such arbitration as may be specified in or determined under the scheme.

(6) Where a person is entitled, in consequence of an energy transfer scheme, to possession of a document relating in part to the title to land or other property in Northern Ireland, or to the management of such land or other property, the scheme may—

- (a) provide for that person to be treated as having given another person an acknowledgement in writing of the right of that other person to production of the document and to delivery of copies of it; and
- (b) apply section 9 of the Conveyancing Act 1881 (c. 41) (with any specified modifications) in relation to any such case.

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(7) In this paragraph references to a transfer in accordance with an energy transfer scheme include references to the creation in accordance with such a scheme of an interest, right or liability.

#### *Effect of scheme*

8.—(1) In relation to each provision of an energy transfer scheme for the transfer of property, rights or liabilities, or for the creation of interests, rights or liabilities—

- (a) this Act shall have effect so as, without further assurance, to vest the property or interests, or those rights or liabilities, in the transferee at the time appointed by the High Court for the purposes of paragraph 3(4); and
- (b) the provisions of that scheme in relation to that property or those interests, or those rights or liabilities, shall have effect from that time.

(2) In this paragraph “the transferee”—

- (a) in relation to property, rights or liabilities transferred by an energy transfer scheme, means the new energy company; and
- (b) in relation to interests, rights or liabilities created by such a scheme, means the person in whose favour, or in relation to whom, they are created.

#### *Subsequent modification of scheme*

9.—(1) The Department may by notice to the old energy company and the new energy company modify an energy transfer scheme after it has taken effect, but only modifications to which both the old energy company and the new energy company have consented may be made.

(2) The notice must specify the time at which it is to take effect (the “modification time”).

(3) Where a notice is issued under this paragraph in relation to an energy transfer scheme, as from the modification time, the scheme shall for all purposes be treated as having taken effect, at the time appointed for the purposes of paragraph 3(4), with the modifications made by the notice.

(4) Those modifications may make—

- (a) any provision that could have been included in the scheme when it took effect at the time appointed for the purposes of paragraph 3(4); and
- (b) transitional provision in connection with provision falling within paragraph (a).

(5) In deciding whether to modify an energy transfer scheme, the Department must have regard, in particular, to—

- (a) the public interest; and

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(b) the effect the modification is likely to have (if any) upon the interests of third parties.

(6) Before modifying an energy transfer scheme that has taken effect, the Department must consult the Authority.

(7) The old energy company and the new energy company each have a duty to provide the Department with all information and other assistance that it may reasonably require for the purposes of, or in connection with, the exercise of the powers conferred on it by this paragraph.

#### *Transfers in the case of non-NI companies*

**10** Where the old energy company is a non-NI company, the property, rights and liabilities of that company which may be transferred by an energy transfer scheme, or in relation to which interests, rights or liabilities may be created by such a scheme, are confined to—

- (a) property of the old energy company in Northern Ireland;
- (b) rights and liabilities arising in relation to any such property; and
- (c) rights and liabilities arising in connection with the affairs and business of the company so far as carried on in Northern Ireland.

#### *Provision relating to foreign property etc.*

**11.—(1)** Where there is a transfer in accordance with an energy transfer scheme of—

- (a) any foreign property, or
- (b) a foreign right or liability,

the old energy company and the new energy company must each take all requisite steps to secure that the vesting of the foreign property, right or liability in the new energy company is effective under the relevant foreign law.

(2) Until the vesting of the foreign property, right or liability in the new energy company in accordance with the energy transfer scheme is effective under the relevant foreign law, the old energy company must—

- (a) hold the property or right for the benefit of the new energy company; or
- (b) discharge the liability on behalf of the new energy company.

(3) The old energy company must comply with any directions given to it by the new energy company in relation to the performance of the obligations under sub-paragraphs (1) and (2) of the old energy company.

(4) Nothing in sub-paragraphs (1) to (3) prejudices the effect under the law of Northern Ireland of the vesting of a foreign property, right or liability in the new energy company in accordance with an energy transfer scheme.

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(5) Where—

- (a) any foreign property, right or liability is acquired or incurred in respect of any other property, right or liability by a company, and
- (b) by virtue of this paragraph, the company holds the other property or right for the benefit of the new energy company or is required to discharge the liability on behalf of the new energy company,

the property, right or liability acquired or incurred shall immediately become the property, right or liability of the new energy company.

(6) The provisions of sub-paragraphs (1) to (5) shall have effect in relation to foreign property, rights or liabilities transferred to the new energy company under sub-paragraph (5) as they have effect in the case of property, rights and liabilities transferred in accordance with an energy transfer scheme.

(7) References in this paragraph to foreign property, or to a foreign right or liability, are references to any property, right or liability as respects which an issue arising in any proceedings would be determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside Northern Ireland.

(8) Expenses incurred under this paragraph by a company as the company from which anything is transferred shall be met by the new energy company.

(9) An obligation imposed under this paragraph in relation to property, rights or liabilities shall be enforceable as if contained in a contract between the old energy company and the new energy company.

#### *Application of Schedule to transfers to subsidiaries*

**12** Where the proposed transfer falling within subsection (3) of section 18 is a transfer of the kind mentioned in subsection (4)(a) of that section, this Schedule shall have effect in relation to that transfer as if—

- (a) paragraph 3(1)(a) were omitted; and
- (b) paragraph 3(6) had effect with “the old energy company has consented may be made” substituted for the words from “both” onwards.

#### *Interpretation*

**13** In this Schedule—

“energy transfer scheme” has the meaning given by paragraph 3(1);

“new energy company” has the meaning given by paragraph 1;

“old energy company” has the meaning given by paragraph 1;

“third party”, in relation to an energy transfer scheme or any modification of such a scheme, means a person who is neither—

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- (a) the old energy company; nor
- (b) the new energy company.

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