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STATUTORY INSTRUMENTS

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**1996 No. 275 (N.I. 2)**

**NORTHERN IRELAND**

**The Gas (Northern Ireland) Order 1996**

*Made - - - - 14th February 1996  
Coming into operation on days to be appointed under  
Article 1(2)*

At the Court at Buckingham Palace, the 14th day of February 1996

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

**PART I**

**INTRODUCTORY**

**Citation and commencement**

1.—(1) This Order may be cited as the Gas (Northern Ireland) Order 1996.

(2) This Order shall come into operation on such day or days as the Head of the Department may by order appoint.

(3) An order under paragraph (2) may contain such transitional or saving provisions as appear to the Head of the Department to be necessary or expedient.

**Interpretation – general**

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“construction”, in relation to a pipe-line, includes placing;

“the Department” means the Department of Economic Development;

“the Director” means the Director General of Gas for Northern Ireland;

“government department” means a department of the Government of the United Kingdom or a Northern Ireland department;

“modifications” includes additions, omissions, amendments and substitutions;

“notice” means notice in writing;

“pipe-line” means a pipe (together with any apparatus and works associated therewith), or system of pipes (together with any apparatus and works associated therewith) for the conveyance of gas, not being—

- (a) a pipe or system of pipes constituting or comprised in apparatus for heating or cooling or for domestic purposes; or
- (b) a pipe or system of pipes wholly situated—
  - (i) within the site of any apparatus or works to which certain provisions of the Factories Act (Northern Ireland) 1965 apply by virtue of section 125(1) of that Act (building operations and works of engineering construction);
  - (ii) within the boundaries of any land occupied as a unit for purposes of agriculture (within the meaning of the Agriculture Act (Northern Ireland) 1949), where the pipe or system of pipes is designed for use for purposes of agriculture; or
  - (iii) in premises used for the purposes of education or research;

“premises” includes any land, building or structure;

“prescribed” means prescribed by regulations;

“regulations” (except in Articles 22, 35 and 37) means regulations made by the Department;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

(3) For the purposes of this Order the following apparatus and works, and no other, shall be treated as being associated with a pipe, or system of pipes, namely,—

- (a) apparatus for inducing or facilitating the flow of gas through, or through a part of, the pipe or system;
- (b) valves, valve chambers, manholes, inspection pits and similar works, being works annexed to, or incorporated in the course of, the pipe or system;
- (c) apparatus for supplying energy for the operation of any such apparatus or works as are mentioned in sub-paragraph (a) or (b);
- (d) apparatus for the transmission of information for the operation of the pipe or system;
- (e) apparatus for affording cathodic protection to the pipe or system;
- (f) a structure for the exclusive support of a part of the pipe or system.

(4) For the purposes of this Order the length of a pipe-line shall be taken to be the total length of pipe comprised in it; but where, in a system of pipes, a number of adjacent parallel lengths of pipe serve the same purpose as would be served by a single pipe of a diameter greater than that of any of those lengths, that number shall be taken to constitute a single pipe.

(5) For the purposes of this Order the execution of works in land for the purpose of determining whether or not it is suitable for the placing in it of a pipe-line and the carrying out of surveying operations for the purpose of settling the route of a proposed pipe-line shall be deemed not to constitute the execution of works for the construction of a pipe-line.

## PART II

### GAS SUPPLY AND ASSOCIATED ACTIVITIES

#### *Interpretation*

#### **Interpretation of Part II**

3.—(1) In this Part—

“the 1973 Act” means the Fair Trading Act 1973;

“the 1980 Act” means the Competition Act 1980;

“exemption” means an exemption under Article 7;

“gas plant” includes any plant, equipment, pipe-line or apparatus used for, or for purposes connected with, the conveyance, storage or supply of gas;

“gas storage facility” means any facility designed or adapted for the storage of gas in bulk (whether in a liquid state or not), not being a pipe or other conduit for the conveyance of gas;

“the General Consumer Council” means the General Consumer Council for Northern Ireland;

“information” includes accounts, estimates and returns;

“licence” means a licence granted under Article 8;

“licence holder” means the holder of a licence granted under Article 8;

“the Monopolies Commission” means the Monopolies and Mergers Commission.

(2) In this Part “gas” means any substance which is in a gaseous state at a temperature of 15°C and a pressure of 1013.25 millibars and—

(a) consists wholly or mainly of methane; or

(b) is specified in an order made by the Department; or

(c) consists wholly or mainly of—

(i) a mixture of two or more substances falling within sub-paragraph (a) or (b); or

(ii) a combustible mixture of one or more such substances and air.

(3) This Part applies only in relation to gas supplied, or intended to be supplied, through pipes; and references in this Part to gas shall be construed accordingly.

#### *Introductory*

#### **The Director General of Gas for Northern Ireland**

4.—(1) The Department shall appoint a person to be known as the Director General of Gas for Northern Ireland (“the Director”) for the purpose of carrying out the functions assigned to him by this Order.

(2) An appointment of a person to hold office as the Director shall be for a term not exceeding 5 years; but previous appointment to that office shall not affect eligibility for re-appointment.

(3) The Director may at any time resign his office as the Director by reasonable notice addressed to the Department; and the Department may remove any person from that office on the ground of incapacity or misbehaviour.

(4) Subject to paragraphs (2) and (3), the Director shall hold and vacate office as such in accordance with the terms of his appointment.

(5) The provisions of Schedule 1 shall have effect with respect to the Director.

### **General duties of the Department and Director**

5.—(1) It shall be the duty of the Department and the Director to exercise their functions under this Part in accordance with the following provisions of this Article.

(2) It shall be the duty of the Department and the Director to exercise their functions under this Part in the manner which the Department or the Director considers is best calculated—

- (a) to promote the development and maintenance of an efficient, economic and co-ordinated gas industry in Northern Ireland; and
- (b) to secure that licence holders are able to finance the carrying on of the activities which they are authorised or required by their licences to carry on.

(3) Subject to paragraph (2), it shall be the duty of the Department and the Director to exercise their functions under this Part in the manner which the Department or the Director considers is best calculated—

- (a) to protect the interests of consumers of gas supplied by persons authorised by licences to supply gas in respect of—
  - (i) the prices charged and the other terms of supply;
  - (ii) the continuity of supply; and
  - (iii) the quality of the gas supply services provided;
- (b) to protect the interests of licence holders in respect of the prices at which, and the other terms on which, any services are provided by one licence holder to another;
- (c) to promote the efficient use of gas supplied to consumers;
- (d) to protect the public from dangers arising from the conveyance, storage, supply or use of gas; and
- (e) to facilitate competition between persons whose activities consist of or include conveying, storing or supplying gas;

and to take into account, in exercising those functions, the effect on the environment (whether by way of pollution or otherwise) of activities connected with the conveyance, storage or supply of gas.

(4) In performing the duty under paragraph (3)(a)(iii), the Department or Director shall take into account, in particular, the interests of those who are chronically sick, disabled or of pensionable age.

(5) A person is of pensionable age for the purposes of paragraph (4) if—

- (a) he has attained pensionable age (within the meaning given by the rules in paragraph 1 of Schedule 2 to the Pensions (Northern Ireland) Order 1995); or
- (b) in the case of a man born before 6th April 1955, he is the same age as a woman who has attained pensionable age (within the meaning so given).

### *Licensing of supply of gas and associated activities*

#### **Prohibition on unlicensed supply of gas and associated activities**

6.—(1) Subject to Article 7, a person who—

- (a) conveys gas from one place to another;
- (b) stores gas in a gas storage facility; or
- (c) supplies gas to any other person or to any premises,

shall be guilty of an offence unless he is authorised to do so by a licence.

- (2) A person guilty of an offence under this Article shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.

(3) No proceedings shall be instituted in respect of an offence under this Article except by or on behalf of the Department or the Director.

### **Exemptions from Article 6**

7.—(1) The Department may, after consultation with the Director, by order grant exemption from sub-paragraph (a), (b) or (c) of Article 6(1)—

- (a) either to a person or to persons of a class;
- (b) either generally or to such extent as may be specified in the order; and
- (c) either unconditionally or subject to such conditions as may be so specified.

(2) An exemption granted to persons of a class, and the revocation of such an exemption, shall be published in such manner as the Department considers appropriate for bringing it to the attention of persons likely to be affected.

(3) An exemption, unless previously revoked in accordance with any term contained in the exemption, shall continue in operation for such period as may be specified in or determined by or under the exemption.

(4) Without prejudice to the generality of paragraph (1)(c), conditions included by virtue of that sub-paragraph in an exemption may require any person carrying on any activity in pursuance of the exemption—

- (a) to comply with any direction given by the Department or the Director as to such matters as are specified in the exemption or are of a description so specified;
- (b) except in so far as the Department or the Director consents to his doing or not doing them, not to do or to do such things as are specified in the exemption or are of a description so specified; and
- (c) to refer for determination by the Department or the Director such questions arising under the exemption as are specified in the exemption or are of a description so specified.

(5) If any condition of an exemption granted to persons of a class is not complied with by any person of that class, the Department may give to that person a direction declaring that the exemption is revoked, so far as relating to that person, to such extent and as from such date as may be specified in the direction.

### **Licences authorising supply, etc.**

8.—(1) The Department after consultation with the Director, or the Director with the consent of, or in accordance with a general authority given by, the Department, may grant a licence authorising any person to do all or any of the following, namely—

- (a) to convey gas from one place to another in an area authorised by the licence;
- (b) to store gas in a specified gas storage facility;
- (c) to supply gas to specified persons or premises.

In this paragraph and paragraph (2) “specified” means specified in the licence, or of a class or description, or in an area, so specified.

(2) The Department after consultation with the Director, or the Director with the consent of, or in accordance with a general authority given by, the Department, may—

- (a) extend a licence granted under paragraph (1)(a) or (c) by increasing the area authorised by the licence; or
- (b) extend a licence granted under paragraph (1)(b) by adding to the specified gas storage facilities;
- (c) extend a licence granted under paragraph (1)(c) by adding to the specified persons or premises.

(3) An application for a licence or extension shall be made in the prescribed manner and shall be accompanied by such fee (if any) as may be prescribed; and within 14 days from the making of such an application, the applicant shall publish a copy of the application in the prescribed manner.

(4) Before granting a licence or extension under this Article, the Department or the Director shall give notice—

- (a) stating that the Department or the Director, as the case may require, proposes to grant the licence or extension;
- (b) stating the reasons why it is proposed to grant the licence or extension; and
- (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed licence or extension may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(5) A licence or extension shall be in writing and, unless previously revoked in accordance with any term contained in it, a licence shall continue in force for such period as may be specified in or determined by or under the licence.

(6) As soon as practicable after granting or extending a licence, the Department or Director shall give notice stating that the licence or extension has been granted.

(7) A notice under paragraph (4) or (6) shall be given by publishing the notice in such manner as the Department or the Director considers appropriate for bringing it to the attention of persons likely to be affected by the grant or extension of the licence.

(8) Neither the requirement to consult imposed by paragraph (1) nor paragraphs (3) and (4) shall apply to the granting of any licences which are granted in the period of 3 months beginning with the day on which this Article comes into operation.

(9) Any sums received by the Director under this Article shall be paid into the Consolidated Fund.

#### **Exclusive licences under Article 8(1)(a) or (c)**

9.—(1) A licence granted under Article 8(1)(a) or (c) may, if the grantor having regard to the duties imposed by Article 5 considers it appropriate, confer on the holder of the licence, for a period specified in the licence, exclusive authority to carry on designated activities.

(2) In this Article, in relation to a licence—

“designated activities” means such of the activities authorised by the licence as are designated in the licence for the purposes of this Article, and activities may be so designated by reference to a class or description of activities or by reference to any area in which they are authorised to be carried on by the licence;

“specified period” means the period specified in the licence under paragraph (1) or substituted for that period under paragraph (5)(a) or (7)(a).

(3) Where a licence granted under Article 8(1)(a) or (c) confers on the holder exclusive authority to carry on designated activities, no other licence shall be granted under Article 8(1)(a) or (c) so as to authorise any other person to carry on any such designated activities in the specified period.

(4) Conditions included under Article 10(1)(a) in a licence conferring on the holder exclusive authority to carry on any designated activities may make special provision in relation to the carrying on of such activities within the specified period.

(5) Where the grantor is satisfied on reasonable grounds that the holder of a licence conferring exclusive authority to carry on designated activities has contravened any relevant condition of his licence, the grantor may modify the licence—

- (a) so as to substitute for the specified period such shorter period as the grantor may determine;
- (b) so as to exclude from those activities which are designated activities for the purposes of this Article such activities as the grantor may determine; or
- (c) so as to remove from the licence those provisions which confer exclusive authority to carry on designated activities.

(6) In paragraph (5) “relevant condition” means a condition of the licence (whether one included by virtue of paragraph (4) or not) which is identified in the licence as a relevant condition for the purposes of this Article.

(7) The grantor may, with the consent of the holder of a licence conferring exclusive authority to carry on designated activities, modify the licence—

- (a) so as to substitute for the specified period such longer period as the grantor may determine;
- (b) so as to add to those activities which are designated activities for the purposes of this Article such activities as the grantor may determine.

(8) Before making any modifications under paragraph (5) or (7) the grantor shall give notice—

- (a) stating that the grantor proposes to make the modifications and setting out their effect;
- (b) stating the reasons why the grantor proposes to make the modifications; and
- (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are so made and not withdrawn.

(9) A notice under paragraph (8) shall be given—

- (a) by publishing the notice in such manner as the grantor considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
- (b) by sending a copy of the notice to the holder of the licence.

### **Conditions of licences**

**10.—**(1) A licence may include—

- (a) such conditions (whether or not relating to the activities authorised by the licence) as appear to the grantor to be requisite or expedient having regard to the duties imposed by Article 5; and
- (b) conditions requiring the rendering to the grantor of a payment on the grant of the licence, or payments during the currency of the licence, or both, of such amount or amounts as may be determined by or under the licence.

(2) Without prejudice to the generality of paragraph (1)(a), conditions included in a licence by virtue of that sub-paragraph—

- (a) may require the licence holder to enter into agreements with other persons for the use of any gas plant of his (wherever situated and whether or not used for the purpose of carrying

- on the activities authorised by the licence) for such purposes as may be specified in the conditions; and
- (b) may include provision for determining the terms on which such agreements are to be entered into.
- (3) Conditions included in a licence under paragraph (1)(a) may require the licence holder—
- (a) to comply with any direction given by the Department or the Director as to such matters as are specified in the licence or are of a description so specified;
- (b) except in so far as the Department or the Director consents to his doing or not doing them, not to do or to do such things as are specified in the licence or are of a description so specified;
- (c) to refer for determination by the Department or the Director such questions arising under the licence as are specified in the licence or are of a description so specified;
- (d) to refer for approval by the Department or the Director such things falling to be done under the licence, and such arrangements, contracts or agreements made before the grant of the licence, as are specified in the licence or are of a description so specified; and
- (e) to provide the Department or the Director with, or publish, such information relating to the activities authorised by the licence as appear to the Department or the Director to be requisite or expedient having regard to the duties imposed by Article 5.
- (4) Conditions included in a licence under paragraph (1)(a) may—
- (a) instead of specifying or describing any arrangements, contracts or agreements to which they apply, refer to arrangements, contracts or agreements designated (whether before or after the imposition of the conditions) by the Department or the Director; and
- (b) instead of containing any provisions which fall to be made, refer to provisions set out in documents so designated and direct that those provisions shall have such effect as may be specified in the conditions.
- (5) Conditions included in a licence may contain provision for the conditions to cease to have effect or be modified at such times, in such manner and in such circumstances as may be specified in or determined by or under the conditions.
- (6) Any provision included under paragraph (5) in a licence shall have effect in addition to the provision made by this Part with respect to the modification of the conditions of a licence.
- (7) Any sums received by the Director in consequence of any condition of a licence shall be paid into the Consolidated Fund.

### **Standard conditions of licences**

**11.**—(1) Such conditions as may be determined by the Department, and published by it in such manner as it considers appropriate, in relation to licences under sub-paragraph (a), (b) or (c) of Article 8(1) shall be standard conditions for the purposes of licences under that sub-paragraph.

(2) Subject to paragraph (3) and Articles 14(2), 17(2) and 18(2), each condition which by virtue of paragraph (1) is a standard condition for the purposes of licences under sub-paragraph (a), (b) or (c) of Article 8(1) shall be incorporated (that is to say, incorporated by reference) in each licence under that sub-paragraph.

(3) The Department, or the Director with the consent of the Department or in accordance with a general authority given by the Department under Article 8, may, in granting a licence, modify any of the standard conditions to such extent as the Department or the Director considers requisite to meet the circumstances of the particular case.

(4) The modification under paragraph (3) of a condition of a licence shall not prevent so much of the condition as is not modified being regarded as a standard condition for the purposes of this Part.

## Assignment of licences

12.—(1) A licence shall be capable of being assigned either generally or—

- (a) in the case of a licence under Article 8(1)(a), so far as relating to the whole or any part of an authorised area;
- (b) in the case of a licence under Article 8(1)(b), so far as relating to any specified gas storage facility;
- (c) in the case of a licence under Article 8(1)(c), so far as relating to any specified persons or premises,

but only if it includes a condition authorising such assignment.

In this paragraph “specified” means specified in the licence, or of a class or description, or in an area, so specified.

(2) A licence shall not be capable of being assigned except with the consent of the Director.

(3) In deciding whether to give his consent under paragraph (2), the Director shall apply the same criteria as he would apply if—

- (a) in the case of a general assignment, he were deciding whether to grant a corresponding licence to the assignee;
- (b) in the case of any other assignment, he were deciding whether—
  - (i) to grant to the assignee a licence corresponding to so much of the licence as is proposed to be assigned; and
  - (ii) to grant to the assignor a licence corresponding to so much of the licence as is proposed to be retained.

(4) Subject to paragraph (5), a consent under paragraph (2) may be given subject to compliance with—

- (a) such modification or other conditions as the Director considers necessary or expedient for the purpose of protecting the interests of consumers; and
- (b) such incidental or consequential modification conditions as he considers necessary or expedient.

(5) The Director shall give the Department not less than 28 days' notice of any proposal of his to impose a modification condition; and if, before the expiry of the time specified in the notice, the Department directs the Director not to impose the condition, the Director shall comply with the direction.

(6) A licence may include conditions which must be complied with before the licence can be assigned.

(7) An assignment, or purported assignment, of a licence shall be v o i d —

- (a) if the licence is not capable of assignment;
- (b) if the assignment, or purported assignment, is in breach of a condition of the licence; or
- (c) if there has, before the assignment or purported assignment, been a contravention of a condition subject to compliance with which the consent required by paragraph (2) is given.

(8) A licence shall not be capable of being assigned under any other provision of this Part.

(9) In this Article—

“assignment” includes any form of transfer;

“modification condition” means a condition requiring or otherwise providing for the making of modifications to the conditions of a licence;

and the reference in this paragraph to a licence includes (where applicable) a reference to so much of a licence as is retained by an assignor.

### **Powers of licence holders**

**13.**—(1) Subject to paragraph (2)—

(a) Schedule 2 (which makes provision with respect to the compulsory acquisition of land); and

(b) Schedule 3 (which confers other powers in relation to land and makes other provision), shall, to the extent that his licence so provides, have effect in relation to the holder of a licence under Article 8(1)(a) or (b); and references in those Schedules to a licence holder shall be construed accordingly.

(2) Where any provision of either of the Schedules mentioned in paragraph (1) is applied to a licence holder by his licence, it shall have effect subject to such restrictions, exceptions and conditions as may be included in the licence for the purpose of qualifying that provision as so applied or any power or right conferred by or under it.

### *Modification of licences*

#### **Modification by agreement**

**14.**—(1) Subject to the following provisions of this Article, the Director may—

(a) modify the conditions of a particular licence; or

(b) modify the standard conditions of licences under sub-paragraph (a), (b) or (c) of Article 8(1).

(2) Where at any time the Director modifies under paragraph (1)(b) the standard conditions of licences under sub-paragraph (a), (b) or (c) of Article 8(1), he—

(a) shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences under that sub-paragraph granted after that time; and

(b) may make such incidental or consequential modifications as he considers necessary or expedient of any conditions of licences under that sub-paragraph granted before that time.

(3) Before making modifications under this Article, the Director shall give notice—

(a) stating that he proposes to make the modifications and setting out their effect;

(b) stating the reasons why he proposes to make the modifications; and

(c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(4) A notice under paragraph (3) shall be given—

(a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and

(b) by sending a copy of the notice to the holder of the licence or, as the case may be, the relevant licence holders and to the Department.

(5) If, within the time specified in the notice under paragraph (3), the Department directs the Director not to make any modification, the Director shall comply with the direction.

- (6) The Director shall not make any modifications under paragraph (1)(a) unless—
- (a) the holder of the licence has consented to the modifications; and
  - (b) in the case of standard conditions of a licence, the Director is of the opinion that the modifications—
    - (i) are requisite to meet the circumstances of the particular case; and
    - (ii) are such that no other licence holder would be unduly disadvantaged in competing with other licence holders (including the holder of the licence).

- (7) The Director shall not make any modifications under paragraph (1)(b) unless—
- (a) the percentage given by each of paragraphs (8) and (9) is not less than 90 per cent;
  - (b) the percentage given by paragraph (8) is not less than 90 per cent and no relevant activities have been carried on by relevant licence holders; or
  - (c) paragraph (10) applies.

(8) The percentage given by this paragraph is the fraction given by the following formula expressed as a percentage, namely—

$$\frac{C}{C + N}$$

where—

- C = the number of consenting holders;
- N = the number of non-consenting holders.

(9) The percentage given by this paragraph is the fraction given by the following formula expressed as a percentage, namely—

$$\frac{C}{C + N}$$

where—

- C = the volume of gas to which relevant activities carried on by consenting holders relate;
  - N = the volume of gas to which relevant activities carried on by non-consenting holders relate,
- as estimated (in each case) by the Director on the basis of the information available to him.

- (10) This paragraph applies where the Director is of the opinion—
- (a) that the effect of the standard conditions is such as to impose a burden affecting relevant licence holders in the carrying on of activities to which the modifications relate;
  - (b) that the modifications would remove or reduce the burden without removing any necessary protection; and
  - (c) that the modifications are such that no relevant licence holder would be unduly disadvantaged in competing with other relevant licence holders.

(11) Where at any time the Director modifies standard conditions under paragraph (2)(a) for the purposes of their incorporation in licences under sub-paragraph (a), (b) or (c) of Article 8(1) granted after that time, he shall publish the modifications in such manner as he considers appropriate.

- (12) In this Article, in relation to modifications of standard conditions under paragraph (1)(b)—
- “consenting holder” means a relevant licence holder who has consented to the modifications;
  - “non-consenting holder” means a relevant licence holder who has not so consented;

“relevant activity” means an activity to which the modifications relate and which is carried on in the period of 12 months immediately preceding the making of the modifications;

“relevant licence holder” means a licence holder whose licence incorporates the standard conditions.

(13) The Department may by order substitute for the percentage for the time being specified in paragraph (7)(a) and (b) such other percentage as the Department thinks fit.

### **Modification references to Monopolies Commission**

**15.**—(1) The Director may make to the Monopolies Commission a reference which is so framed as to require the Commission to investigate and report on the questions—

- (a) whether any matters which—
  - (i) relate to the carrying on of activities authorised or required by a particular licence; and
  - (ii) are specified in the reference, operate, or may be expected to operate, against the public interest; and
- (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the relevant conditions, that is to say, the conditions of the licence.

(2) The Director may make to the Monopolies Commission a reference which is so framed as to require the Commission to investigate and report on the questions—

- (a) whether any matters which—
  - (i) relate to the carrying on of activities authorised or required by licences under sub-paragraph (a), (b) or (c) of Article 8(1); and
  - (ii) are specified in the reference, operate, or may be expected to operate, against the public interest; and
- (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the relevant conditions, that is to say, the standard conditions of licences under that sub-paragraph.

(3) The Director may, at any time, by notice given to the Monopolies Commission vary a reference under this Article by adding to the matters specified in the reference or by excluding from the reference some or all of the matters so specified; and on receipt of any such notice the Commission shall give effect to the variation.

(4) The Director may specify in a reference under this Article, or a variation of such a reference, for the purpose of assisting the Monopolies Commission in carrying out the investigation on the reference—

- (a) any effects adverse to the public interest which, in his opinion, the matters specified in the reference or variation have or may be expected to have; and
- (b) any modifications of the relevant conditions by which, in his opinion, those effects could be remedied or prevented.

(5) As soon as practicable after making a reference under this Article or a variation of such a reference, the Director—

- (a) shall serve a copy of the reference or variation on the licence holder or, as the case may be, the relevant licence holders; and

- (b) shall publish particulars of the reference or variation in such manner as he considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it.

(6) The Director shall also send a copy of a reference under paragraph (2), or a variation of such a reference, to the Department; and if, before the end of the period of 28 days from the day on which the Department receives the copy of the reference or variation, the Department directs the Monopolies Commission not to proceed with the reference or, as the case may require, not to give effect to the variation, the Commission shall comply with the direction.

(7) It shall be the duty of the Director, for the purpose of assisting the Monopolies Commission in carrying out an investigation on a reference under this Article, to give to the Commission—

- (a) any information in his possession which relates to matters falling within the scope of the investigation and—
  - (i) is requested by the Commission for that purpose; or
  - (ii) is information which, in his opinion, it would be appropriate for that purpose to give to the Commission without any such request; and
- (b) any other assistance which the Commission may require, and which it is within his power to give, in relation to any such matters;

and the Commission, for the purpose of carrying out any such investigation, shall take account of any information given to them for that purpose under this paragraph.

(8) In determining for the purposes of this Article whether any particular matter operates, or may be expected to operate, against the public interest, the Monopolies Commission shall have regard to the matters as respects which duties are imposed on the Department and the Director by Article 5.

(9) Sections 70 (time limit for report on merger reference), 81 (procedure in carrying out investigations) and 85 (attendance of witnesses and production of documents) of the 1973 Act, Part II of Schedule 3 to that Act (performance of functions of the Monopolies Commission) and section 24 of the 1980 Act (modifications of provisions about performance of such functions) shall apply in relation to references under this Article as if—

- (a) the functions of the Commission in relation to those references were functions under the 1973 Act;
- (b) “merger reference” included a reference under this Article;
- (c) in the said section 70, references to the Secretary of State were references to the Director and the reference to three months were a reference to six months;
- (d) in paragraph 11 of the said Schedule 3, the reference to section 71 of the 1973 Act were a reference to paragraph (3) of this Article; and
- (e) paragraph 16(2) of that Schedule were omitted.

(10) In this Article and Articles 16 and 17—

“relevant conditions” has the meaning given by paragraph (1) or (2);

“relevant licence holder”—

- (a) in relation to a reference under paragraph (2), means the holder of a licence to which the reference relates;
- (b) in relation to modifications of relevant conditions within the meaning given by that paragraph, means the holder of a licence which incorporates the conditions.

### **Reports on modification references**

**16.—**(1) In making a report on a reference under Article 15, the Monopolies Commission—

- (a) shall include in the report definite conclusions on the questions comprised in the reference together with such an account of their reasons for those conclusions as in their opinion is expedient for facilitating a proper understanding of those questions and of their conclusions;
- (b) where they conclude that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, shall specify in the report the effects adverse to the public interest which those matters have or may be expected to have; and
- (c) where they conclude that any adverse effects so specified could be remedied or prevented by modifications of the relevant conditions, shall specify in the report modifications by which those effects could be remedied or prevented.

(2) Where, on a reference under Article 15, the Monopolies Commission conclude that the licence holder or, as the case may be, any of the relevant licence holders is a party to an agreement to which the Restrictive Trade Practices Act 1976 applies, the Commission, in making their report on that reference, shall exclude from their consideration the question whether the provisions of that agreement, in so far as they are provisions by virtue of which it is an agreement to which that Act applies, operate, or may be expected to operate, against the public interest; and paragraph (1)(b) shall have effect subject to the provisions of this paragraph.

(3) Section 82 of the 1973 Act (general provisions as to reports) shall apply in relation to reports of the Monopolies Commission on references under Article 15 as it applies to reports of the Commission under that Act.

(4) A report of the Monopolies Commission on a reference under Article 15 shall be made to the Director.

(5) Subject to paragraph (7), the Director shall—

- (a) on receiving a report on a reference under Article 15(1), send a copy of it to the licence holder and to the Department; and
- (b) not less than 14 days from the day on which the Department receives that copy, publish the report in such manner as he considers appropriate for bringing the report to the attention of persons likely to be affected by it.

(6) Subject to paragraph (7), the Director shall—

- (a) on receiving a report on a reference under Article 15(2), send a copy of it to the Department; and
- (b) not less than 14 days from the day on which the Department receives that copy—
  - (i) send another copy to each relevant licence holder; and
  - (ii) not less than 24 hours after complying with head (i), publish the report in such manner as he considers appropriate for bringing the report to the attention of persons likely to be affected by it.

(7) If it appears to the Department that the publication of any matter in such a report would be against the public interest or the commercial interests of any person, the Department may, before the end of the period of 14 days mentioned in paragraph (5)(b) or (6)(b), direct the Director to exclude that matter from every copy of the report to be published or (as the case may be) sent and published under that sub-paragraph.

### **Modification following report**

17.—(1) Where a report of the Monopolies Commission on a reference under Article 15—

- (a) includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest;

- (b) specifies effects adverse to the public interest which those matters have or may be expected to have;
- (c) includes conclusions to the effect that those effects could be remedied or prevented by modifications of the relevant conditions; and
- (d) specifies modifications by which those effects could be remedied or prevented,

the Director shall, subject to the following provisions of this Article, make such modifications of the relevant conditions as appear to him requisite for the purpose of remedying or preventing the adverse effects specified in the report.

(2) Where at any time the Director modifies under paragraph (1) the standard conditions of licences under sub-paragraph (a), (b) or (c) of Article 8(1), he—

- (a) shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences under that sub-paragraph granted after that time; and
- (b) may make such incidental or consequential modifications as he considers necessary or expedient of any conditions of licences under that sub-paragraph granted before that time,

and the above reference to paragraph (1) is a reference to that paragraph as it applies in relation to a report on a reference under Article 15(2).

(3) Before making modifications under this Article, the Director shall have regard to the modifications specified in the report.

(4) Before making modifications under this Article, the Director shall give notice—

- (a) stating that he proposes to make the modifications and setting out their effect;
- (b) stating the reasons why he proposes to make the modifications; and
- (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(5) A notice under paragraph (4) shall be given—

- (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the making of the modifications; and
- (b) by serving a copy of the notice on the licence holder or, as the case may be, the relevant licence holders.

(6) Where at any time the Director modifies standard conditions under paragraph (2)(a) for the purposes of their incorporation in licences under sub-paragraph (a), (b) or (c) of Article 8(1) granted after that time, he shall publish the modifications in such manner as he considers appropriate.

### **Modification by order under other statutory provisions**

**18.**—(1) Where in the circumstances mentioned in paragraph (3) the Secretary of State by order exercises any of the powers specified in—

- (a) Parts I and II of Schedule 8 to the 1973 Act; or
- (b) section 10(2)(a) of the 1980 Act,

the order may also provide for the modification of—

- (i) the conditions of a particular licence; or
- (ii) the standard conditions of licences under sub-paragraph (a), (b) or (c) of Article 8(1),

to such extent as may appear to him to be requisite or expedient for the purpose of giving effect to or of taking account of any provision made by the order.

(2) Where at any time the Secretary of State modifies under paragraph (1)(ii) the standard conditions of licences under sub-paragraph (a), (b) or (c) of Article 8(1), he—

- (a) shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences under that sub-paragraph granted after that time; and
- (b) may, after consultation with the Director, make such incidental or consequential modifications as he considers necessary or expedient of any conditions of licences under that sub-paragraph granted before that time.

(3) Paragraph (1) shall have effect where—

- (a) the circumstances are as mentioned in section 56(1) of the 1973 Act (order on report on monopoly reference) and the monopoly situation exists in relation to the carrying on of activities authorised or required by a licence;
- (b) the circumstances are as mentioned in section 73(1) of that Act (order on report on merger reference) and at least one of the two or more enterprises which ceased, or (in the application of that provision as it has effect by virtue of section 75(4)(e) of that Act) which would cease, to be distinct enterprises was or, as the case may be, is engaged in the carrying on of activities authorised or required by a licence; or
- (c) the circumstances are as mentioned in section 10(1) of the 1980 Act (order on report on competition reference) and the anti-competitive practice relates to the carrying on of activities authorised or required by a licence.

(4) Where at any time the Secretary of State modifies standard conditions under paragraph (2)(a) for the purposes of their incorporation in licences under sub-paragraph (a), (b) or (c) of Article 8(1) granted after that time, he shall publish the modifications in such manner as he considers appropriate.

(5) In this Article expressions which are also used in the 1973 Act or the 1980 Act have the same meanings as in that Act.

#### *Enforcement of preceding provisions*

#### **Orders for securing compliance**

**19.**—(1) Subject to paragraphs (2) and (5) and Article 20, where the Director is satisfied that a licence holder is contravening, or is likely to contravene, any relevant condition, he shall by a final order make such provision as is requisite for the purpose of securing compliance with that condition.

(2) Subject to paragraph (5), where it appears to the Director—

- (a) that a licence holder is contravening, or is likely to contravene, any relevant condition; and
- (b) that it is requisite that a provisional order be made,

he shall (instead of taking steps towards the making of a final order) by a provisional order make such provision as appears to him requisite for the purpose of securing compliance with that condition.

(3) In determining for the purposes of paragraph (2)(b) whether it is requisite that a provisional order be made, the Director shall have regard, in particular—

- (a) to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of the relevant condition, is likely to be done, or omitted to be done, before a final order may be made; and

- (b) to the fact that the effect of the provisions of this Article and Article 21 is to exclude the availability of any remedy (apart from under those provisions or for negligence) in respect of any contravention of a relevant condition.
- (4) Subject to paragraph (5) and Article 20, the Director shall confirm a provisional order, with or without modifications, if—
- (a) he is satisfied that the licence holder to whom the order relates is contravening, or is likely to contravene, any relevant condition; and
  - (b) the provision made by the order (with any modifications) is requisite for the purpose of securing compliance with that condition.
- (5) The Director shall not make a final order or make or confirm a provisional order in relation to a licence holder if he is satisfied—
- (a) that the duties imposed on him by Article 5 preclude the making or, as the case may be, the confirmation of the order;
  - (b) that the licence holder has agreed to take and is taking all such steps as it appears to the Director for the time being to be appropriate for the licence holder to take for the purpose of securing or facilitating compliance with the condition in question; or
  - (c) that the contraventions were, or the apprehended contraventions are, of a trivial nature.
- (6) Where the Director is satisfied as mentioned in paragraph (5), he shall—
- (a) serve notice that he is so satisfied on the licence holder; and
  - (b) publish the notice in such manner as he considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.
- (7) A final or provisional order—
- (a) shall require the licence holder to whom it relates (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified;
  - (b) shall take effect at such time, being the earliest practicable time, as is determined by or under the order; and
  - (c) may be revoked at any time by the Director.
- (8) Without prejudice to the generality of the power conferred by paragraph (1), the provision that may be made in a final order includes, in particular, the imposition by the Director on the licence holder to whom the order relates of a requirement to pay to the Director a monetary penalty of such amount as may be appropriate, in all the circumstances of the case, in respect of the contravention in question.
- (9) In this Article and the following provisions of this Part—
- “final order”, means an order under this Article, other than a provisional order;
  - “provisional order” means an order under this Article which, if not previously confirmed under paragraph (4), will cease to have effect at the end of such period (not exceeding 3 months) as is determined by or under the order;
  - “relevant condition”, in relation to a licence holder, means any condition of his licence.
- (10) Any sums received by the Director by way of monetary penalty under this Article shall be paid into the Consolidated Fund.

**Procedural requirements**

**20.**—(1) Before he makes a final order or confirms a provisional order, the Director shall give notice—

- (a) stating that he proposes to make or confirm the order and setting out its effect;
- (b) setting out—
  - (i) the relevant condition for the purpose of securing compliance with which the order is to be made or confirmed;
  - (ii) the acts or omissions which, in his opinion, constitute or would constitute contraventions of that condition; and
  - (iii) the other facts which, in his opinion, justify the making or confirmation of the order; and
- (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed order or proposed confirmation may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(2) A notice under paragraph (1) shall be given—

- (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
- (b) by serving a copy of the notice, and a copy of the proposed order or of the order proposed to be confirmed, on the licence holder to whom the order relates.

(3) The Director shall not make a final order with modifications, or confirm a provisional order with modifications, except—

- (a) with the consent to the modifications of the licence holder to whom the order relates; or
- (b) after complying with the requirements of paragraph (4).

(4) The requirements mentioned in paragraph (3) are that the Director shall—

- (a) serve on the licence holder to whom the order relates such notice as appears to him requisite of his proposal to make or confirm the order with modifications;
- (b) in that notice specify the period (not being less than 28 days from the date of the service of the notice) within which representations or objections with respect to the proposed modifications may be made; and
- (c) consider any representations or objections which are duly made and not withdrawn.

(5) As soon as practicable after making a final order or making or confirming a provisional order, the Director shall—

- (a) serve a copy of the order on the licence holder to whom the order relates; and
- (b) publish the order in such manner as he considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.

(6) Before revoking a final order or a provisional order which has been confirmed, the Director shall give notice—

- (a) stating that he proposes to revoke the order and setting out its effect; and
- (b) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed revocation may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(7) If, after giving a notice under paragraph (6), the Director decides not to revoke the order to which the notice relates, he shall give notice of his decision.

(8) A notice under paragraph (6) or (7) shall be given—

(a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and

(b) by serving a copy of the notice on the licence holder to whom the order relates.

### **Validity and effect of orders**

**21.**—(1) If the licence holder to whom a final or provisional order relates is aggrieved by the order and desires to question its validity on the ground—

(a) that its making or confirmation was not within the powers of Article 19; or

(b) that any of the requirements of Article 20 have not been complied with in relation to it, he may, within 42 days from the date of service on him of a copy of the order, make an application to the High Court under this Article.

(2) On any such application the High Court, if satisfied that the making or confirmation of the order was not within those powers or that the interests of the licence holder have been substantially prejudiced by a failure to comply with those requirements—

(a) may quash the order or any provision of the order; or

(b) if and to the extent that the application related to so much of an order as imposes a monetary penalty, may substitute a monetary penalty of such lesser amount as the High Court considers appropriate in all the circumstances of the case.

(3) Except as provided by this Article, the validity of a final or provisional order shall not be questioned by any legal proceedings whatever.

(4) The obligation to comply with a final or provisional order shall be a duty owed to any person who may be affected by a contravention of the order. P

(5) Where a duty is owed under paragraph (4) to any person, any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit of that person.

(6) In any proceedings brought against a licence holder under paragraph (5), it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the order.

(7) Without prejudice to any right which any person may have under paragraph (5) to bring civil proceedings in respect of any contravention or apprehended contravention of a final or provisional order, compliance with any such order shall be enforceable by civil proceedings by the Director for an injunction or for any other appropriate relief.

### *Meters*

### **Meter testing and stamping**

**22.**—(1) No meter shall be used for the purpose of ascertaining the quantity of gas supplied to any person unless it is stamped either by, or on the authority of, a meter examiner appointed under this Article or in such other manner as may be authorised by regulations.

(2) Subject to paragraphs (3) to (5), it shall be the duty of a meter examiner who is a member of the Director's staff, on being required to do so by any person and on payment of the prescribed fee, to examine any meter used or intended to be used for ascertaining the quantity of gas supplied to any person, and to stamp, or authorise the stamping of, that meter.

(3) A meter examiner shall not stamp, or authorise the stamping of, any meter unless he is satisfied that it is of such pattern and construction and is marked in such manner as is approved by the Director and that the meter conforms with such standards as may be prescribed.

(4) A meter examiner may stamp or authorise another person to stamp a meter, notwithstanding that he has not himself examined it, if—

- (a) the meter was manufactured or repaired by the person submitting it to the examiner;
- (b) that person has obtained the consent of the Director to his submission; and
- (c) any conditions subject to which the consent was given have been satisfied.

(5) A meter examiner may authorise another person to stamp a meter, notwithstanding that he himself has not examined it, if—

- (a) the meter was manufactured or repaired by that person;
- (b) that person has obtained the consent of the Director to his stamping of the meter; and
- (c) any conditions subject to which the consent was given have been satisfied.

(6) Regulations may make provision—

- (a) for re-examining meters already stamped, and for the cancellation of stamps in the case of meters which no longer conform with the prescribed standards and in such other circumstances as may be prescribed;
- (b) for requiring meters to be periodically overhauled;
- (c) for the revocation of any approval given by the Director to any particular pattern or construction of meter, and for requiring existing meters of that pattern or construction to be replaced within such period as may be prescribed; and
- (d) for the expenses of any such re-examination, overhaul or replacement of a meter to be defrayed in such manner as may be prescribed.

(7) All fees payable to meter examiners who are members of the Director's staff for the performance of functions conferred by or under this Article shall be paid to the Director; and any sums received by him under this paragraph shall be paid into the Consolidated Fund.

(8) The fees to be paid to meter examiners who are members of the Director's staff for the performance of functions conferred by or under this Article, and the persons by whom they are to be paid, shall be such as may be prescribed.

(9) The Director shall appoint competent and impartial persons as meter examiners for the purposes of this Article.

(10) If any person—

- (a) supplies gas through a meter which has not been stamped under this Article; or
- (b) uses, for ascertaining the quantity of gas supplied to any person or premises, a meter which has not been stamped under this Article,

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

(11) Where the commission by any person of an offence under paragraph (10) is due to the act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(12) In any proceedings for an offence under paragraph (10) it shall be a defence for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(13) Regulations may exempt meters of a prescribed class or description from provisions of this Article.

(14) In this Article “regulations” means regulations made by the Director.

*Consumer protection: miscellaneous*

**Functions with respect to competition**

**23.**—(1) If and to the extent that he is requested by the Director General of Fair Trading to do so, it shall be the duty of the Director to exercise the functions of that Director under Part III of the 1973 Act (additional functions of Director for protection of consumers) so far as relating to courses of conduct which are or may be detrimental to the interests of consumers of gas, whether those interests are economic or interests in respect of health, safety or other matters; and references in that Part to that Director shall be construed accordingly.

(2) There are hereby transferred to the Director (so as to be exercisable concurrently with the Director General of Fair Trading)—

- (a) the functions of that Director under sections 44 (power to require information) and 45 (information with respect to complex monopoly situations) of the 1973 Act;
- (b) the functions of that Director under sections 50, 52 and 53 (monopoly references) and 86 and 88 (reports of Monopolies Commission) of that Act; and
- (c) the functions of that Director under sections 56A to 56G of that Act,

so far as relating to monopoly situations which exist or may exist in relation to commercial activities connected with the conveyance, storage or supply of gas; and references in Part IV and sections 86, 88 and 133 of that Act to that Director shall be construed accordingly.

(3) There are hereby transferred to the Director (so as to be exercisable concurrently with the Director General of Fair Trading) the functions of that Director under sections 2 to 10 (investigation of anti-competitive practice and competition references to Monopolies Commission) and 16 (reports of Monopolies Commission) of the 1980 Act so far as relating to courses of conduct which have or are intended to have or are likely to have the effect of restricting, distorting, or preventing competition in connection with the conveyance, storage or supply of gas; and references in those sections and in section 19 of that Act (restriction on disclosure of information) to that Director shall be construed accordingly.

(4) Before either Director first exercises in relation to any matter functions transferred by any of the following provisions, namely—

- (a) paragraph (2)(a);
- (b) paragraph (2)(b);
- (c) paragraph (2)(c); and
- (d) paragraph (3),

he shall consult the other Director; and neither Director shall exercise in relation to any matter functions transferred by any of those provisions if functions transferred by that provision have been exercised in relation to that matter by the other Director.

(5) It shall be the duty of the Director, for the purpose of assisting the Monopolies Commission in carrying out an investigation on a reference made to them by the Director by virtue of paragraph (2) or (3), to give to the Commission—

- (a) any information which is in his possession and which relates to matters falling within the scope of the investigation and—
  - (i) is requested by the Commission for that purpose; or

(ii) is information which in his opinion it would be appropriate for that purpose to give to the Commission without any such request; and

(b) any other assistance which the Commission may require and which it is within his power to give, in relation to any such matters,

and the Commission shall, for the purposes of carrying out any such investigation, take into account any information given to them for that purpose under this paragraph.

(6) If any question arises as to whether paragraph (2) or (3) applies to any particular case, that question shall be referred to and determined by the Department; and no objection shall be taken to anything done under—

(a) Part IV or section 86 or 88 of the 1973 Act (reports of Monopolies Commission); or

(b) sections 2 to 10 of the 1980 Act (investigation of anti-competitive practice and competition references to Monopolies Commission),

by or in relation to the Director on the ground that it should have been done by or in relation to the Director General of Fair Trading.

(7) Section 93B of the 1973 Act (offences of supplying false or misleading information to the Secretary of State, the Director General of Fair Trading or the Monopolies Commission in connection with their functions under Parts IV, V, VI or VIII of the 1973 Act or under the 1980 Act) shall have effect, so far as relating to functions exercisable by the Director by virtue of paragraph (2) or (3), as if the reference in subsection (1)(a) of that section to the Director of Fair Trading included a reference to the Director.

(8) In this Article expressions which are also used in the 1973 Act or the 1980 Act have the same meanings as in that Act.

(9) References in this Part to functions of the Director under this Part include references to functions transferred to the Director by paragraph (2) or (3).

### **Fixing of maximum charges for reselling gas**

**24.**—(1) This Article applies to gas supplied to a consumer's premises by an authorised gas supplier, that is to say, a person who is authorised by a licence or exemption to supply gas to those premises.

(2) The Director shall from time to time direct that the maximum prices at which gas to which this Article applies may be resold—

(a) shall be such as may be specified in the direction; or

(b) shall be calculated by such method and by reference to such matters as may be so specified, and shall publish directions under this Article in such manner as in his opinion will secure adequate publicity for them.

(3) A direction under this Article may—

(a) require any person who resells gas to which this Article applies to furnish the purchaser with such information as may be specified or described in the direction; and

(b) provide that, in the event of his failing to do so, the maximum price applicable to the resale shall be such as may be specified in the direction or shall be reduced by such amount or such percentage as may be so specified.

(4) Different directions may be given under this Article in different classes of cases, which may be defined by reference to areas, tariffs applicable to gas supplied by the authorised gas suppliers or any other relevant circumstances.

(5) If any person resells gas to which this Article applies at a price exceeding the maximum price determined by or under a direction under this Article and applicable to the resale—

- (a) the amount of the excess; and
- (b) if the direction so provides, interest on that amount at a rate specified or described in the direction,

shall be recoverable by the purchaser.

(6) Nothing in this Article shall apply in relation to the resale of gas for use in a motor vehicle which is constructed or adapted to use gas as fuel for its propulsion.

### *Investigation of complaints*

#### **Investigation of enforcement matters**

**25.**—(1) Subject to paragraph (2), it shall be the duty of the Director to investigate any matter which appears to him to be an enforcement matter and which—

- (a) is the subject of a representation (other than one appearing to the Director to be frivolous) made to the Director by or on behalf of a person appearing to the Director to have an interest in that matter; or
- (b) is referred to him by the General Consumer Council under paragraph (3).

(2) The Director may, if he thinks fit, require the General Consumer Council to investigate and report to him on any matter falling within paragraph (1).

(3) It shall be the duty of the General Consumer Council to refer to the Director any matter which—

- (a) appears to the Council to be an enforcement matter; and
- (b) is the subject of a representation (other than one appearing to the Council to be frivolous) made to the Council by or on behalf of a person appearing to the Council to have an interest in the matter.

(4) In this Article and Article 26 “enforcement matter” means any matter in respect of which any functions of the Director under Article 19 are or may be exercisable.

#### **Investigation of certain other matters**

**26.**—(1) It shall be, the duty of the General Consumer Council to investigate any matter which appears to the Council to be a relevant matter and which—

- (a) is the subject of a representation (other than one appearing to the Council to be frivolous) made to the Council by or on behalf of a person (other than the holder of a licence or exemption) appearing to the Council to have an interest in that matter; or
- (b) is referred to the Council by the Director under paragraph (2).

(2) Subject to paragraph (3), it shall be the duty of the Director to refer to the General Consumer Council any matter which—

- (a) appears to the Director to be a relevant matter; and
- (b) is the subject of a representation (other than one appearing to the Director to be frivolous) made to the Director by or on behalf of a person (other than the holder of a licence or exemption) appearing to the Director to have an interest in that matter.

(3) Nothing in paragraph (2) shall require the Director to refer to the General Consumer Council any matter in respect of which he is considering exercising functions under this Part.

(4) Where on an investigation under paragraph (1) any matter appears to the General Consumer Council to be a matter in respect of which it would be appropriate for the Director to exercise

any functions under this Part, the Council shall refer that matter to the Director with a view to his exercising those functions with respect to that matter.

(5) In this Article “relevant matter”, in relation to the General Consumer Council, means any matter (other than an enforcement matter)—

- (a) in respect of which any functions of the Director under this Part are or may be exercisable; and
- (b) which relates to the holder of a licence or exemption.

#### *Other functions of Director*

#### **General functions**

27.—(1) It shall be the duty of the Director, so far as it appears to him practicable to do so—

- (a) to keep under review the carrying on both in Northern Ireland and elsewhere of activities connected with the conveyance, storage and supply of gas; and
- (b) to collect information with respect to those activities, and the persons by whom they are carried on, with a view to facilitating the exercise of his functions under this Part.

(2) The Department may give general directions indicating—

- (a) considerations to which the Director should have particular regard in determining the order of priority in which matters are to be brought under review in performing his duty under paragraph (1)(a) or (b); and
- (b) considerations to which, in cases where it appears to the Director that any of his functions under this Part are exercisable, he should have particular regard in determining whether to exercise those functions.

(3) It shall be the duty of the Director, where either he considers it expedient or he is requested by the Department or the Director General of Fair Trading to do so, to give information, advice and assistance to the Department or that Director with respect to any matter in respect of which any function of the Director or the Department under this Part is exercisable.

(4) It shall be the duty of the Director to make such arrangements as he considers appropriate for the provision of information by him to the General Consumer Council.

#### **Publication of information and advice**

28.—(1) The Director shall arrange for the publication, in such form and in such manner as he considers appropriate, of such information and advice as it appears to him expedient to give to customers or potential customers of licence holders.

(2) In arranging for the publication of any such information or advice the Director 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 Director, 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 Director, seriously and prejudicially affect the interests of that body.

(3) The Director General of Fair Trading shall consult the Director before publishing under section 124 of the 1973 Act (publication of information and advice) any information or advice which may be published by the Director under this Article.

### **Keeping of register**

**29.**—(1) The Director shall, at such premises and in such form as he may determine, maintain a register for the purposes of this Part.

(2) Subject to paragraph (3) and to any direction given under paragraph (4), the Director shall cause to be entered in the register the provisions of—

- (a) every licence and every exemption granted to a particular person;
- (b) every modification or revocation of a licence and every revocation of an exemption;
- (c) every direction or consent given or determination made under a licence; and
- (d) every final or provisional order, every confirmation of a provisional order, every revocation of such an order and every notice under Article 19(6).

(3) In entering any provision in the register, the Director shall have regard to the need for excluding, so far as that is practicable, the matters specified in Article 28(2)(a) and (b).

(4) If it appears to the Department that the entry of any provision in the register would be against the public interest or the commercial interests of any person, the Department may direct the Director not to enter that provision in the register.

(5) The contents of the register shall be available for inspection by the public during such hours and subject to the payment of such fee as the Director may determine.

(6) Any person may, on the payment of such fee as the Director may determine, require the Director to supply him with a copy of, or extract from, any part of the register, being a copy or extract which is certified by the Director to be a true copy or extract.

(7) Any sums received by the Director under this Article shall be paid into the Consolidated Fund.

### **Power to require information, etc.**

**30.**—(1) Where it appears to the Director that a licence holder may be contravening, or may have contravened, any relevant condition, the Director may, for any purpose connected with such of his functions under Article 19 as are exercisable in relation to that matter, by notice signed by him—

- (a) require the person on whom it is served to produce, at a time and place specified in the notice, to the Director or to any person appointed by the Director for the purpose, any documents which are specified or described in the notice and are in that person's custody or under his control; or
- (b) require that person, if he is carrying on a business, to furnish, at a time and place and in the form and manner specified in the notice, to the Director such information as may be specified or described in the notice.

(2) Where a licence has been or is to be revoked, or has expired or is about to expire by effluxion of time, and it appears to the Director, having regard to the duties imposed by Article 5, to be requisite or expedient to do so for any purpose connected with the revocation or expiry, the Director may, with the consent of the Department, by notice signed by him—

- (a) require the licence holder to produce, at a time and place specified in the notice, to the Director, or to any person so specified, any records which are specified or described in the notice and are in the licence holder's custody or under his control; or
- (b) require the licence holder to furnish to the Director, or to any person specified in the notice, such information as may be specified or described in the notice, and specify the time, the manner and the form in which such information is to be furnished.

(3) No person shall be required under this Article to produce any documents or records which he could not be compelled to produce in civil proceedings in the High Court or, in complying with

any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in any such proceedings.

(4) A person who without reasonable excuse fails to do anything required of him by notice under paragraph (1) or (2) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) A person who intentionally alters, suppresses or destroys any document or records which he has been required by any notice under paragraph (1) or (2) to produce shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(6) If a person makes default in complying with a notice under paragraph (1) or (2), the High Court may, on the application of the Director, make such order as the Court thinks fit for requiring the default to be made good; and any such order may provide that all the costs of and incidental to the application shall be borne by the person in default or by any officers of a company or other body or association who are responsible for its default.

### **Duty to consider representations and give reasons**

**31.**—(1) The Department may by order exercise any one or more of the powers conferred by paragraphs (2) to (4).

(2) This paragraph confers power to provide that, before the Director makes a specified decision in relation to a licence holder, the Director—

- (a) shall give to the licence holder a written notice stating—
  - (i) that he is considering making the decision and the reasons why he is considering doing so; and
  - (ii) that the licence holder may, within a period specified in the notice, make written representations to him or, if the licence holder so requests, make oral representations to a person appointed by him for the purpose; and
- (b) shall consider any representations which are duly made and not withdrawn.

(3) This paragraph confers power to provide that, where the Director makes a specified decision in relation to a licence holder, the Director shall as soon as practicable give to the licence holder a written notice explaining why it appeared to him to be appropriate to make the decision.

(4) This paragraph confers power to provide that, where a specified decision made or proposed to be made in relation to a licence holder will or may materially affect any specified person, any provision made by virtue of paragraph (2) or (3) shall, with any specified modifications, apply in relation to that person.

(5) Nothing in any order made under this Article shall require the Director to disclose any information the disclosure of which he considers would or might seriously and prejudicially affect the interests of a particular individual or body of persons, whether corporate or unincorporate.

(6) In this Article—

- “decision” means any decision under this Part, or under a condition of a licence, other than a decision to make a provisional order under Article 19;
- “specified”, in relation to an order under this Article, means specified in the order or of a description so specified;

and references to a licence holder include references to an applicant for a licence.

### **Annual and other reports**

- 32.**—(1) The Director shall, as soon as practicable after the end of each calendar year—
- (a) make to the Department a report on—
    - (i) his activities during that year; and
    - (ii) the Monopolies Commission’s activities during that year so far as relating to references made by him; and
  - (b) send a copy of that report to the chairman of the General Consumer Council.
- (2) Every such report shall—
- (a) include a general survey of developments, during the year to which it relates, in respect of matters falling within the scope of the Director’s functions;
  - (b) set out any final or provisional orders made, and provisional orders confirmed, by the Director during that year;
  - (c) set out any general directions given to the Director during that year under Article 27(2); and
  - (d) include a summary of any reports made to him during that year by the General Consumer Council under Article 34.
- (3) The Department shall lay a copy of every report made by the Director under paragraph (1) before the Assembly and shall arrange for copies of every such report to be published in such manner as the Department considers appropriate.
- (4) The Director shall also make to the Department—
- (a) such reports with respect to the matters mentioned in paragraph (2)(a) as the Department may require; and
  - (b) such other reports with respect to those matters as may appear to him to be expedient;
- and the Director shall, if the Department so directs, arrange for copies of any report made under this paragraph to be published in such manner as is specified in the direction.
- (5) In making or preparing any report under this Article the Director shall have regard to the need for excluding, so far as that is practicable, the matters specified in Article 28(2)(a) and (b).
- (6) Section 125(1) of the 1973 Act (annual and other reports) shall not apply to activities of the Monopolies Commission on which the Director is required to report by this Article.

### *Provisions with respect to the General Consumer Council*

#### **General duty of the General Consumer Council to advise Director, etc.**

- 33.**—(1) It shall be the duty of the General Consumer Council—
- (a) to make representations to and consult with holders of licences or exemptions about all such matters as appear to the Council to affect the interests of consumers of gas;
  - (b) to keep under review matters affecting the interests of consumers of gas; and
  - (c) to advise the Director on any matter affecting the interests of such consumers on which the Council considers it should offer advice or which is referred to the Council by the Director.
- (2) The Director may, to such extent as may be approved by the Department of Finance and Personnel, defray or contribute towards the expenses of the General Consumer Council in exercising functions under this Part.

**Reports of the General Consumer Council**

**34.**—(1) The General Consumer Council—

- (a) shall make a report to the Director on any such matter as he may require; and
- (b) may make a report to the Director concerning any matter which appears to the Council to affect the interests of consumers of gas.

(2) The General Consumer Council shall send to the Director a copy of every report prepared by it under paragraph 12(1) of Schedule 1 to the General Consumer Council (Northern Ireland) Order 1984 (annual report of Council).

*Major pipe-lines, gas storage facilities and gas processing facilities***Consent of Director for construction of major pipe-line**

**35.**—(1) Any person who executes works for the construction of a major pipe-line-

- (a) without the consent of the Director granted under this Article; or
- (b) otherwise than in accordance with the conditions subject to which the consent of the Director is granted under this Article,

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

(2) For the purposes of this Article a major pipe-line is a pipe-line which when constructed—

- (a) will exceed 7 kilometres in length; and
- (b) will have a design operating pressure exceeding 7 bar gauge.

(3) The Director may by regulations amend the definition of major pipe-line in paragraph (2).

(4) An application for the consent of the Director under this Article shall—

- (a) specify the points between which the proposed pipe-line is to run and be accompanied by a map on which is delineated the route which it is proposed to take;
- (b) specify the length, diameter and capacity of the proposed pipe-line;
- (c) be in such form, contain such other information and be accompanied by such fee as may be prescribed by regulations made by the Director.

(5) An applicant for a consent under this Article shall provide the Director with such other information relevant to the application as the Director may require.

(6) As soon as practicable after making an application for a consent under this Article, the applicant shall publish notice of that fact in such manner as the Director may require and such notice shall—

- (a) name a place where a copy of the application (and the map accompanying it) may be inspected free of charge, and copies thereof may be obtained on payment of a reasonable charge, at all reasonable hours; and
- (b) specify a time within which representations concerning the application may be made to the Director.

(7) After considering any such representations duly made to him, the Director may grant consent under this Article to the applicant or may refuse such consent.

(8) A consent granted under this Article—

- (a) shall remain in force for such period as may be specified in or determined under the consent; and
- (b) may be granted subject to such conditions (to be specified therein) as the Director thinks fit.

(9) Without prejudice to the generality of paragraph (8)(b), a consent under this Article may be granted subject to conditions—

- (a) as to the route which the pipe-line is to take (subject to such limits of lateral deviation as may be specified);
- (b) as to the ownership and operation of the pipe-line;
- (c) requiring works for the construction of the pipe-line to be substantially commenced within a specified period;
- (d) requiring the pipe-line, or any specified length of it, to be so constructed as to be capable of conveying specified quantities of gas.

(10) Paragraph (11) applies where—

- (a) representations concerning an application are duly made to the Director under paragraph (6); and
- (b) a consent granted in pursuance of that application indicates that specified conditions are, or are to a specified extent, attributable solely to such representations;

and references in paragraphs (11) and (12) to “additional conditions” are references to conditions specified under sub-paragraph (b) or (as the case may be) to such conditions to the extent so specified.

(11) Where this paragraph applies, the consent—

- (a) shall specify the sums or the method of determining the sums which the Director considers should be paid to the applicant by such of the persons who made representations to the Director as are specified, for the purpose of defraying so much of the cost of constructing the pipe-line as is attributable to the additional conditions;
- (b) shall specify the arrangements which the Director considers should be made by each of those persons, within a specified period, for the purpose of securing that those sums will be paid to the applicant if he constructs the pipe-line in accordance with the additional conditions.

(12) Where it appears to the Director that arrangements specified under paragraph (11)(b) have not been made by any person within the period so specified, the Director may amend the consent so as to eliminate the additional conditions so far as attributable to the representations made by that person.

(13) In paragraphs (9) to (12) “specified” means specified in the consent.

(14) Sums received by the Director under this Article shall be paid into the Consolidated Fund.

### **Increase of capacity, etc. of pipe-line**

**36.**—(1) If in the case of a pipe-line operated by a person holding a licence under Article 8(1) (a) (“the operator”) it appears to the Director, on the application of a person other than the operator, that the pipe-line can and should be modified—

- (a) by installing in it a junction through which another pipe-line may be connected to it; or
- (b) by modifying apparatus and works associated with a high pressure pipe-line so as to increase the capacity of the pipe-line,

then, subject to paragraph (3), the Director may, after giving to the operator an opportunity of being heard about the matter, give directions to the operator in accordance with paragraph (2) in consequence of the application.

(2) Directions under paragraph (1) may—

- (a) specify the modifications which the Director considers should be made in consequence of the application;

- (b) specify the sums or the methods of determining the sums which the Director considers should be paid to the operator by the applicant for the purpose of defraying the cost of the modifications;
- (c) specify the arrangements which the Director considers should be made by the applicant, within a period specified in the directions, for the purpose of securing that those sums will be paid to the operator if he carries out the modifications;
- (d) require the operator, if the applicant makes those arrangements within the period specified under sub-paragraph (c), to carry out the modifications within a period specified in the directions.

(3) Where the Director proposes to give directions under paragraph (1), it shall be his duty before doing so to give to the applicant particulars of the modifications which he proposes to specify in the directions.

(4) The obligation to comply with any directions under paragraph (1) is a duty owed to any person who may be affected by a contravention of them.

(5) Where a duty is owed by virtue of paragraph (4) to any person, any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit or instance of that person.

(6) In any proceedings brought against any person in pursuance of paragraph (5), it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the directions in question.

(7) Without prejudice to any right which any person may have by virtue of paragraph (5) to bring civil proceedings in respect of any contravention or apprehended contravention of any directions under paragraph (1), compliance with any such directions shall be enforceable by civil proceedings by the Director for an injunction or for any other appropriate relief.

(8) In this Article “high pressure pipe-line” means any pipe-line which—

- (a) has a design operating pressure exceeding 7 bar gauge; or
- (b) is of a class specified by order made by the Department.

### **Consent of Director for construction of gas storage facility**

**37.—**(1) Any person who executes works for the construction of a gas storage facility—

- (a) without the consent of the Director granted under this Article; or
- (b) otherwise than in accordance with the conditions subject to which the consent of the Director is granted under this Article,

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

(2) For the purposes of this Article the execution of works in land for the purpose of determining whether or not it is suitable as the location of a gas storage facility and the carrying out of surveying operations for that purpose shall be deemed not to constitute the execution of works for the construction of a gas storage facility.

(3) An application for the consent of the Director under this Article shall—

- (a) specify the location and capacity of the proposed gas storage facility;
- (b) be in such form, contain such other information and be accompanied by such fee as may be prescribed by regulations made by the Director.

(4) An applicant for a consent under this Article shall provide the Director with such other information relevant to the application as the Director may require.

(5) As soon as practicable after making an application for a consent under this Article, the applicant shall publish notice of that fact in such manner as the Director may require and such notice shall—

- (a) name a place where a copy of the application may be inspected free of charge, and copies thereof may be obtained on payment of a reasonable charge, at all reasonable hours; and
- (b) specify a time within which representations concerning the application may be made to the Director.

(6) After considering any such representations duly made to him, the Director may grant consent under this Article to the applicant or may refuse such consent.

(7) A consent granted under this Article—

- (a) shall remain in force for such period as may be specified in or determined under the consent; and
- (b) may be granted subject to such conditions (to be specified therein) as the Director thinks fit.

(8) Without prejudice to the generality of paragraph (7)(b), a consent under this Article may be granted subject to conditions—

- (a) as to the ownership and operation of the gas storage facility;
- (b) requiring works for the construction of the facility to be substantially commenced within a specified period;
- (c) requiring the facility to be so constructed as to be capable of storing specified quantities of gas.

(9) Paragraph (10) applies where—

- (a) representations concerning an application are duly made to the Director under paragraph (5); and
- (b) a consent granted in pursuance of that application indicates that specified conditions are, or are to a specified extent, attributable solely to such representations;

and references in paragraphs (10) and (11) to “additional conditions” are references to conditions specified under sub-paragraph (b) or (as the case may be) to such conditions to the extent so specified.

(10) Where this paragraph applies, the consent—

- (a) shall specify the sums or the method of determining the sums which the Director considers should be paid to the applicant by such of the persons who made representations to the Director as are specified, for the purpose of defraying so much of the cost of constructing the gas storage facility as is attributable to the additional conditions;
- (b) shall specify the arrangements which the Director considers should be made by each of those persons, within a specified period, for the purpose of securing that those sums will be paid to the applicant if he constructs the gas storage facility in accordance with the additional conditions.

(11) Where it appears to the Director that arrangements specified under paragraph (10)(b) have not been made by any person within the period so specified, the Director may amend the consent so as to eliminate the additional conditions so far as attributable to the representations made by that person.

(12) In paragraphs (8) to (11) “specified” means specified in the consent.

(13) Sums received by the Director under this Article shall be paid into the Consolidated Fund.

**Increase of capacity of gas storage facility**

**38.**—(1) If in the case of a gas storage facility operated by a person holding a licence under Article 8(1)(b) (“the operator”) it appears to the Director, on the application of a person other than the operator, that the gas storage facility can and should be modified to increase the capacity of that facility, then, subject to paragraph (2), the Director may, after giving to the operator an opportunity of being heard about the matter, give directions to the operator in consequence of the application.

(2) Paragraphs (2) to (7) of Article 36 apply in relation to directions under paragraph (1) of this Article as they apply in relation to directions under paragraph (1) of that Article.

**Acquisition of rights to use gas processing facilities**

**39.**—(1) In the case of any gas processing facility operated otherwise than by the holder of a licence under Article 8(1)(a), any person may, after giving the owner of the facility not less than 28 days' notice, apply to the Department for directions under this Article which would secure to the applicant a right to have processed by the facility, during a period specified in the application, quantities so specified of gas which—

- (a) is of a kind so specified; and
- (b) is of, or of a kind similar to, the kind which the facility is designed to process.

(2) Where an application is made under paragraph (1), it shall be the duty of the Department—

- (a) to decide whether the application is to be adjourned (so as to enable negotiations or further negotiations to take place), considered further or rejected;
- (b) to give notice of its decision to the applicant; and
- (c) in the case of a decision that the application is to be considered further, to give to the owner of the facility and to any person who has a right to have gas processed by the facility notice that the application is to be so considered and an opportunity of being heard about the matter.

(3) Where, after further considering an application under paragraph (1), the Department is satisfied that the giving of directions under this Article would not prejudice the efficient operation of the facility, or the processing by the facility of—

- (a) the quantities of gas which the owner of the facility or any associate of the owner requires or may reasonably be expected to require to be processed by the facility for the purposes of any business carried on by him; and
- (b) the quantities of gas which any person who is not such an associate and has a right to have gas processed by the facility is entitled to require to be so processed in the exercise of that right,

the Department may give such directions to the owner of the facility.

(4) Directions under this Article may—

- (a) specify the terms on which the Department considers the owner of the facility should enter into an agreement with the applicant for all or any of the following purposes—
  - (i) for securing to the applicant the right to have processed by the facility, during the period specified in the directions and in the quantities so specified, gas which is of a kind so specified;
  - (ii) for securing that the exercise of that right is not prevented or impeded;
  - (iii) for regulating the charges which may be made for the processing of gas by virtue of that right;

- (iv) for securing to the applicant such ancillary or incidental rights as the Department considers necessary or expedient, which may include the right to have a pipe-line of his connected to the facility by the owner;
  - (b) specify the sums or the method of determining the sums which the Department considers should be paid by way of consideration for any such right; and
  - (c) require the owner, if the applicant pays or agrees to pay those sums within a period specified in that behalf in the directions, to enter into an agreement with him on the terms so specified.
- (5) Paragraphs (4) to (7) of Article 36 apply in relation to directions under this Article as they apply in relation to directions under paragraph (1) of that Article, but with the substitution in paragraph (7) of a reference to the Department for the reference to the Director.

(6) In this Article—

“gas processing facility” means any facility which carries out gas processing operations;

“gas processing operation” means any of the following operations, namely—

- (a) purifying, blending, odourising or compressing gas for the purpose of enabling it to be introduced into a pipe-line system operated by the holder of a licence under Article 8(1) (a) or to be conveyed to an electricity generating station, a gas storage facility or any place outside Northern Ireland;
- (b) removing from gas for that purpose any of its constituent gases, or separating from gas for that purpose any oil or water; and
- (c) determining the quantity or quality of gas which is or is to be so introduced, or so conveyed, whether generally or by or on behalf of a particular person,

and “process”, in relation to gas, shall be construed accordingly;

“owner”, in relation to a gas processing facility, includes a lessee and any person occupying or having control of the facility.

(7) For the purposes of this Article a person is an associate of the owner of a gas processing facility if—

- (a) both of them are companies; and
- (b) one of the companies has control of the other, or both are under the control of the same person or persons;

and subsections (2) to (5) of section 416 of the Income and Corporation Taxes Act 1988 shall apply for the purposes of sub-paragraph (b) as they apply for the purposes of Part XI of that Act.

### *Miscellaneous*

#### **Directions for preserving security of gas supplies, etc.**

**40.**—(1) The Department may, after consultation with an authorised person, give to that person such directions of a general character as appear to the Department to be requisite or expedient for the purpose of—

- (a) preserving the security of buildings used for, or for purposes connected with, the conveyance, storage or supply of gas, or of gas plant; or
- (b) mitigating the effects of any civil emergency which may occur.

(2) If it appears to the Department to be requisite or expedient to do so for any such purpose as is mentioned in paragraph (1), the Department may, after consultation with an authorised person, give

to that person a direction requiring him (according to the circumstances of the case) to do, or not to do, a particular thing specified in the direction.

(3) An authorised person shall give effect to any direction given to him by the Department under this Article notwithstanding any other duty imposed on him by or under this Order.

(4) A copy of every direction given under this Article shall be laid before the Assembly unless the Department is of the opinion that disclosure of the direction is against the interests of national security or the commercial interests of any person.

(5) A person shall not disclose, or be required under any statutory provision or otherwise to disclose, anything done by virtue of this Article if the Department has notified him that the Department is of the opinion that disclosure of that thing is against the interests of national security or the commercial interests of some other person.

(6) In this Article—

“authorised person” means the holder of a licence or exemption;

“civil emergency” means any natural disaster or other emergency which, in the opinion of the Department, is or may be likely to disrupt gas supplies.

#### **Exclusion of certain agreements from Restrictive Trade Practices Act 1976**

**41.—**(1) The Restrictive Trade Practices Act 1976 shall not apply to any agreement which—

(a) contains provisions relating to, or to activities connected with—

(i) the introduction of gas into;

(ii) the taking of gas from; or

(iii) the use by any authorised person of,

a pipe-line system operated by the holder of a licence under Article 8(1)(a); and

(b) is specified, or is of a description specified, in an order made by the Department and satisfies such conditions as may be so specified.

(2) Before making an order under paragraph (1) the Department shall consult the Director and the Director General of Fair Trading.

(3) The conditions specified in an order under paragraph (1) may include conditions which refer any matter (which may be the general question whether the Act of 1976 should apply to a particular agreement) to the Department for determination after such consultation as may be so specified.

(4) In this Article “authorised person” means the holder of a licence or exemption.

#### **Disposal of assets of former gas undertaker to require consent of Department**

**42.—**(1) A former gas undertaker shall not, after the coming into operation of this Article, dispose of any assets to which this paragraph applies without the consent of the Department; and any purported disposal by a former gas undertaker of any such assets after the coming into operation of this Article shall be void.

(2) Paragraph (1) applies to assets which—

(a) are vested in the former gas undertaker immediately before the coming into operation of this Article; and

(b) subsist, either wholly or mainly, for the purposes of, or in connection with, or are otherwise attributable to, the functions exercised by the former gas undertaker in its capacity as such.

(3) In this Article “former gas undertaker” means a gas undertaker which has entered into an agreement with the Department under Article 3 of the Gas (Northern Ireland) Order 1985 for the run-down and closure of its gas undertaking.

(4) For the purposes of paragraph (1) a person disposes of any asset if (whether for valuable consideration or not)—

- (a) he transfers or assigns any interest in, or right in respect of, that asset to another person;
- (b) he grants to any other person any right of possession, occupation or use of that asset;
- (c) he mortgages or charges that asset or creates any other encumbrance in respect of it; or
- (d) he deals in any other way with that asset so as to transfer or assign to, or create for the benefit of, any other person any interest in, or right in respect of, the asset.

### **Transfer to licence holder of assets and liabilities of former gas undertaker**

**43.**—(1) The Department may, with the consent of a licence holder, make a scheme for the transfer to the licence holder of such assets and liabilities of a former gas undertaker as are specified in the scheme.

(2) In this Article—

“former gas undertaker” has the same meaning as in Article 42;

“transferred assets” means the assets transferred under this Article;

“transfer scheme” means a scheme under paragraph (1);

“transfer date”, in relation to any transfer of assets or liabilities under this Article, means the date specified in the transfer scheme as the date on which the transfer is to take effect;

and any reference to assets and liabilities of a former gas undertaker is a reference to assets and liabilities—

- (i) to which the former gas undertaker is entitled or subject immediately before the transfer date, whether or not capable of being transferred or assigned by it; and
- (ii) which subsist, either wholly or mainly, for the purposes of, or in connection with, or are otherwise attributable to, the functions exercised by the former gas undertaker in its capacity as such.

(3) Assets and liabilities transferred to a licence holder by a transfer scheme shall on the transfer date become assets and liabilities of the licence holder by virtue of this paragraph; and a certificate issued by the Department that any asset or liability specified in the certificate is by virtue of this paragraph vested in the licence holder shall be conclusive evidence for all purposes of that fact.

(4) A transfer scheme—

- (a) may specify the assets and liabilities to be transferred by describing or identifying them in such manner as the Department considers appropriate;
- (b) shall specify in relation to transferred assets the relevant period (being a period beginning on the transfer date) for the purposes of paragraph (5);
- (c) may provide for the payment by the licence holder to the Department in respect of the transfer of such sum or sums at such time or times as may be specified in, or determined by the Department in accordance with, the scheme;
- (d) may provide for the determination of any sum or sums payable to the Department under sub-paragraph (c) or paragraph (8);
- (e) may provide for the issue to the Department of securities of the licence holder for purposes connected with the scheme or its implementation;
- (f) may contain such supplementary, incidental and consequential provisions as the Department considers appropriate.

(5) A person (whether a licence holder or a successor in title) in whom any transferred assets are vested at any time during the relevant period specified under paragraph (4)(b) in relation to

those assets shall not dispose of those assets before the end of that period without the consent of the Department; and any purported disposal by such a person of any such assets before the end of that period shall be void.

(6) Paragraph (4) of Article 42 applies for the purposes of paragraph (5) as it applies for the purposes of paragraph (1) of that Article.

(7) Paragraph (5) applies to assets which replace, extend or incorporate transferred assets as it applies to transferred assets; and a certificate issued by the Department that any assets do or do not fall within this paragraph shall be conclusive evidence for all purposes of this Article.

(8) A consent under paragraph (5) may be granted subject to such conditions as the Department considers appropriate, including conditions requiring the payment to the Department of such sum or sums at such time or times as may be determined by the Department in accordance with the scheme.

(9) Any sum payable to the Department under paragraph (4)(c) or (8) may be recovered by the Department in a court of competent jurisdiction as a civil debt due to it.

(10) Stamp duty shall not be chargeable on a transfer scheme or any transfer effected under this Article.

#### **General restrictions on disclosure of information**

**44.**—(1) Subject to the following provisions of this Article, no information with respect to any particular business which—

- (a) has been obtained under any of the provisions of this Part; and
- (b) relates to the affairs of any individual or to any particular business,

shall, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.

(2) Paragraph (1) does not apply to any disclosure of information if—

- (a) the disclosure is required by a notice under paragraph (1) or (2) of Article 30;
- (b) the information has been obtained in pursuance of a notice under paragraph (2) of that Article; or
- (c) the disclosure is made by one licence holder to another and is required either by a condition of the disclosing licence holder's licence, or by the other licence holder for purposes connected with the carrying on of activities which he is authorised by his licence to carry on.

(3) Paragraph (1) does not apply to any disclosure of information which is made—

- (a) for the purpose of facilitating the carrying out by the Department, the Director or the Monopolies Commission of any functions under this Part;
- (b) for the purpose of facilitating the carrying out by—
  - (i) any Minister of the Crown;
  - (ii) any Northern Ireland department;
  - (iii) the Director General, of Fair Trading;
  - (iv) the Monopolies Commission;
- (v) the Comptroller and Auditor General for Northern Ireland;
- (vi) the Director General of Telecommunications;
- (vii) the Director General of Gas Supply; (viii) the Director General of Water Services;
- (ix) the Director General of Electricity Supply;

- (x) the Water Appeals Commission for Northern Ireland;
  - (xi) the Director General of Electricity Supply for Northern Ireland; or
  - (xii) the Civil Aviation Authority; of any functions under any of the statutory provisions specified in paragraph (4);
  - (c) for the purpose of enabling or assisting the Secretary of State to exercise any powers conferred on him by the Financial Services Act 1986 or by the statutory provisions relating to insurance companies;
  - (d) for the purpose of enabling or assisting the Department or the Department of Finance and Personnel to exercise any powers conferred on that Department by the statutory provisions relating to companies or insolvency or for the purpose of enabling or assisting any inspector appointed by the Department under the statutory provisions relating to companies to carry out his functions;
  - (e) for the purpose of enabling or assisting the official receiver for Northern Ireland to carry out his functions under the statutory provisions relating to insolvency or for the purpose of enabling or assisting a recognised professional body for the purposes of Article 350 of the Insolvency (Northern Ireland) Order 1989 to carry out its functions as such;
  - (f) for the purpose of facilitating the carrying out by the Health and Safety Agency of any of its functions under any statutory provision;
  - (g) for the purpose of facilitating the carrying out by any district council of its functions under the Consumer Protection Act 1987;
  - (h) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;
  - (i) for the purposes of any civil proceedings brought under this Part or any of the statutory provisions specified in paragraph (4); or
  - (j) in pursuance of a Community obligation.
- (4) The statutory provisions referred to in paragraph (3) are—
- (a) the Trade Descriptions Act 1968;
  - (b) the Water Act (Northern Ireland) 1972;
  - (c) the 1973 Act;
  - (d) the Water and Sewerage Services (Northern Ireland) Order 1973;
  - (e) the Consumer Credit Act 1974;
  - (f) the Restrictive Trade Practices Act 1976;
  - (g) the Resale Prices Act 1976;
  - (h) the Estate Agents Act 1979;
  - (j) the 1980 Act;
  - (k) the Telecommunications Act 1984;
  - (l) the Airports Act 1986;
  - (m) the Gas Act 1986;
  - (n) the Audit (Northern Ireland) Order 1987;
  - (o) the Consumer Protection Act 1987;
  - (p) the Consumer Protection (Northern Ireland) Order 1987;
  - (q) the Electricity Act 1989;
  - (r) the Water Industry Act 1991;

- (s) the Electricity (Northern Ireland) Order 1992;
  - (t) Part IV of the Airports (Northern Ireland) Order 1994;
  - (u) the Control of Misleading Advertisements Regulations 1988.
- (5) The Department may by order provide that any of paragraphs [SI 19881915](#). (2), (3) and (4) shall have effect subject to such modifications as are specified in the order.
- (6) Nothing in paragraph (1) shall be construed—
- (a) as limiting the matters which may be published under Article 28 or may be included in, or made public as part of, a report of the Director, the Monopolies Commission or the General Consumer Council under any provision of this Part; or
  - (b) as applying to any information which has been so published or has been made public as part of such a report.
- (7) Any person who discloses any information in contravention of this Article shall be guilty of an offence and shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

#### **Directions restricting the use of certain information**

**45.**—(1) The Department may give to any person who is authorised by a licence to convey gas from one place to another (“the authorised person”) such directions as appear to the Department to be requisite or expedient for the purpose of securing that, in any case where paragraph (2) applies, neither the person by whom the information mentioned in that paragraph is acquired nor any other person obtains any unfair commercial advantage from his possession of the information.

(2) This paragraph applies where, in the course of any dealings with an outside person who is, or is an associate of, a person authorised by a licence or exemption to convey, store or supply gas, the authorised person or any associate of his is furnished with or otherwise acquires any information which relates to the affairs of that outside person or any associate of his.

(3) As soon as practicable after giving any directions under paragraph (1), the Department shall publish a copy of the directions in such manner as the Department considers appropriate for the purpose of bringing the directions to the attention of persons likely to be affected by a contravention of them.

(4) The obligation to comply with any directions under paragraph (1) is a duty owed to any person who may be affected by a contravention of them.

(5) Where a duty is owed under paragraph (4) to any person any breach of the duty which causes that person to sustain loss or damage shall be actionable-at the suit of that person.

(6) In any proceedings brought against any person under paragraph (S), it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the directions.

(7) Without prejudice to any right which any person may have by virtue of paragraph (5) to bring civil proceedings in respect of any contravention or apprehended contravention of any directions under this Article, compliance with any such directions shall be enforceable by civil proceedings by the Department for an injunction or for any other appropriate relief.

(8) In this Article—

“dealings” includes dealings entered into otherwise than for purposes connected with the conveyance of gas;

“outside person”, in relation to any person, means any person who is not an associate of his;

and for the purposes of this Article a person is an associate of another if he and that other are connected with each other within the meaning of section 839 of the Income and Corporation Taxes Act 1988.

#### **Making of false statements, etc.**

**46.**—(1) If any person, in giving any information or making any application under or for the purposes of any provision of this Part, or of any regulations made under this Part, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, he shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(2) Any person who seeks to obtain entry to any premises by falsely pretending to be an employee of, or other person authorised by, a licence holder, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) No proceedings shall be instituted in respect of an offence under paragraph (1) except by or with the consent of the Department or the Director of Public Prosecutions for Northern Ireland.

#### *Supplemental*

#### **Concurrent proceedings**

**47.**—(1) Where an application or a reference is made by a licence holder under this Part in connection with any matter, the proceedings which—

- (a) are required under this Part to be taken in relation to that application or reference; and
- (b) if applicable, are required by Articles 20 to 24 of the Planning (Northern Ireland) Order 1991 to be taken for the purpose of planning permission;

may, where the Department concerned so directs, be taken concurrently (so far as practicable).

(2) In this Article “the Department concerned” means the Department, or where the matter to which the application or reference relates is a function of some other Department, the Department and that other Department acting jointly.

#### **Public inquiries**

**48.**—(1) The Department may cause an inquiry to be held in any case where the Department considers it advisable to do so in connection with any matter arising under this Part other than a matter in respect of which any functions of the Director under Article 19 are or may be exercisable.

(2) Without prejudice to section 23 of the Interpretation Act (Northern Ireland) 1954, the Department may make rules regulating the procedure to be followed in connection with inquiries held by or on behalf of the Department under this Part.

(3) Where—

- (a) an inquiry is to be held under this Part in connection with any matter; and
- (b) in the case of some other matter required or authorised (whether by this Part or by any other statutory provision) to be the subject of an inquiry (“the other inquiry”), it appears to the Department concerned that the matters are so far cognate that they should be considered together,

the Department concerned may direct that the inquiries be held concurrently or combined as one inquiry.

(4) In paragraph (3) “the Department concerned” means the Department, or where causing the other inquiry to be held is a function of some other Department, the Department and that other Department acting jointly.

## PART III

### SAFETY

#### *Interpretation*

#### **Interpretation of Part III**

**49.** In this Part—

“gas” means any substance which is in a gaseous state at a temperature of 15°C and a pressure of 1013.25 millibars and—

- (a) consists wholly or mainly of methane, ethane, propane, butane, hydrogen or carbon monoxide; or
- (b) is specified in an order made by the Department; or
- (c) consists wholly or mainly of—
  - (i) a mixture of two or more substances falling within paragraph (a) or (b); or
  - (ii) a combustible mixture of one or more such substances and air.

“in”, in a context referring to a pipe-line or a length thereof or works or operations in land, includes a reference to a pipe-line, length, works or operations under, over, across, along or upon it;

“owner”—

- (a) in relation to any land, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion, and includes also a person holding or entitled to the rents and profits of the land under a lease or agreement the unexpired term of which exceeds 3 years;
- (b) in relation to a pipe-line, means the person in whom the pipe-line is vested;
- (c) in relation to a structure, means a person who, in relation to land being the site of the structure, is an owner thereof by virtue of paragraph (a) of this definition.

#### *Safety of pipe-lines*

#### **Power of Department to impose requirements with respect to mode of construction, etc., of pipe-lines**

**50.**—(1) The Department may at any time if it considers it necessary so to do in the interests of safety, by notice served on a person who is executing, or is proposing to execute, works in land for the construction of a pipe-line, prohibit—

- (a) the execution of works for the construction of the line or any specified length thereof, otherwise than in such manner as may be specified;
- (b) the construction of any specified length of the line except of such materials, and with the inclusion of such safety devices, as may be specified;

- (c) the incorporation in any specified length of the line in the course of the construction thereof of component parts of a specified class which do not comply with such requirements as may be specified;
- (d) the placing of the line or any specified length thereof (so far as it falls to be placed below the surface of the ground) at a depth below that surface less than such as may be specified;

and in this paragraph “specified” means specified in the notice.

(2) A notice under paragraph (1) has effect only in relation to works falling to be executed after the service of the notice.

(3) If, before the expiration of 12 weeks from the date on which a notice is served on any person under paragraph (1), he serves a counter-notice on the Department objecting to the notice, the Department shall afford him an opportunity of appearing before and being heard by a person appointed by the Department for the purpose.

(4) Before the expiration of 12 weeks from the date on which any hearing under paragraph (3) is concluded, the Department shall consider the objection and the report of the person appointed to hear the objector and, by notice served on the objector—

- (a) quash the notice objected to, or
- (b) confirm it without modification, or
- (c) confirm it with such modification as appears to the Department to meet the objection.

(5) The quashing of a notice served under paragraph (1) shall not affect the previous operation of the notice or be taken to prevent the service of a fresh notice.

(6) Any person who, in executing works for the construction of a pipe-line, fails to comply with a prohibition imposed by a notice served under paragraph (1), shall be guilty of an offence.

### **Enforcement of requirements imposed under Article 50**

**51.**—(1) In the event of a failure, in relation to the execution of works in land for the construction of a pipe-line, to comply with any prohibition imposed by a notice served under Article 50(1)(a), the Department may serve on the person who executed the works a notice requiring him to remove so much of the works as has been executed without compliance with the prohibition or, if he so elects, to effect such alterations thereto as may be necessary to make them comply with the prohibition.

(2) In the event of a failure, in relation to the execution of works in land for the construction of a pipe-line, to comply with any prohibition imposed by a notice served under Article 50(1)(b), (c) or (d), the Department may serve on the owner of the line a notice requiring him to remove so much of the line as has been constructed without compliance with the prohibition or, if he so elects, to effect such alterations thereto as may be necessary to comply with the prohibition.

(3) If a person on whom a notice is served under paragraph (1) or (2) fails, before the expiration of 6 weeks from the date on which the notice was served, or such longer period as the Department may on his application allow, to comply with the requirement imposed by the notice, the Department may—

- (a) enter and remove any works or length of line with respect to which there has been a failure to comply with the requirement, or
- (b) effect such alterations to the works or line as the Department deems necessary.

(4) Where, in consequence of compliance with a requirement imposed by a notice served on a person under paragraph (1) or (2), another person suffers loss by reason of damage to, or disturbance in the enjoyment of, any land or chattels, that other person shall be entitled to compensation in respect of that loss from the person on whom the notice was served.

(5) Where, in consequence of the exercise by the Department of the powers conferred by paragraph (3), a person (other than the person on whom the notice was served under paragraph (1)

or (2)) suffers loss by reason of damage to, or disturbance in the enjoyment of, any land or chattels, he shall be entitled to compensation in respect of that loss from the Department.

(6) The Department may recover from the person on whom a notice under paragraph (1) or (2) was served—

- (a) the expenses reasonably incurred by it in taking any action under paragraph (3); and
- (b) the amount of any compensation paid by it under paragraph (5).

(7) The removal of any works or length of pipe-line required to be removed by a notice under paragraph (1) or (2) and any change in the use of land which is involved in that removal shall not constitute development for the purposes of the Planning (Northern Ireland) Order 1991.

(8) The service of a notice under paragraph (1) or (2) in consequence of any such failure as is therein mentioned shall be without prejudice to the taking of proceedings under Article 50(6).

### **Prohibition of use of length of pipe-line not complying with requirements imposed under Article 50**

**52.**—(1) Where, by virtue of Article 51(1), works are required to be removed or altered, it shall not be lawful for use to be made of so much of a pipe-line as has been constructed in the course of the execution of the works unless and until such alterations have been effected to the works (whether by the person required to remove or alter them or by the Department) as are necessary to make them comply with the prohibition in contravention of which they were executed.

(2) Where, by virtue of Article 51(2), a length of a pipe-line is required to be removed or altered, it shall not be lawful for use to be made of that length unless and until such alterations have been effected thereto (whether by the person required to remove or alter it or by the Department) as are necessary to make it comply with the prohibition in contravention of which it was constructed.

(3) In the event of a contravention of paragraph (1) in relation to any works, the person who executed them shall be guilty of an offence, and, in the event of a contravention of paragraph (2) in relation to a length of a pipe-line, the owner of the line comprising the length shall be guilty of an offence.

### **Power of Department to impose requirements with respect to examination, repair, etc., of pipe-lines**

**53.**—(1) In the case of any pipe-line, the Department may at any time by notice served on the owner thereof impose such requirements with respect to all or any of the following matters as the Department thinks it expedient to impose in the interests of safety, namely,—

- (a) the examination, repair, maintenance, adjustment and testing of the line;
- (b) the inspection of the route taken by the line.

(2) If, in the case of any pipe-line or length thereof, the Department thinks it expedient in the interests of safety to do so, the Department may by notice served on the owner of the line—

- (a) require that the line shall be so operated that the pressure of its contents, or, as the case may be, the pressure of the contents of that length of it, will at no point exceed such pressure as may be specified in the notice; or
- (b) prohibit the use (either absolutely or for the conveyance of gas other than gas of a particular kind specified in the notice) of the line or, as the case may be, that length of it, until there have been effected thereto such alterations as may be so specified.

(3) Paragraphs (3) to (5) of Article 50 shall apply in relation to a notice served under paragraph (1) of this Article as they apply in relation to a notice served under paragraph (1) of that Article.

(4) In the event of a failure, in relation to a pipe-line or a length of a pipe-line, to comply with a requirement or prohibition imposed by a notice served under paragraph (1) or (2), the owner of the line shall be guilty of an offence.

(5) Where, in consequence of the effecting of alterations to a pipe-line or a length of a pipe-line in consequence of the service of a notice under paragraph (2) a person, other than the person on whom the notice was served, suffers loss by reason of damage to, or disturbance in the enjoyment of, any land or chattels, he shall be entitled to compensation in respect of that loss from the person on whom the notice was served.

**Power of Department to cause action to be taken to render pipe-line safe on abandonment or cesser of use**

**54.**—(1) Where—

- (a) a pipe-line or a length thereof has been abandoned, or 3 years have expired from the date on which a pipe-line or a length thereof was last used; and
- (b) the Department is of the opinion that the line or length is, or is likely to become, a source of danger,

the Department may serve on the owner of the line a notice requiring him to take such action in relation to the line or length as may be specified in the notice, being action which appears to the Department requisite to stop the line or length being, or prevent it becoming, a source of danger.

(2) If a person on whom a notice is served under paragraph (1) fails, before the expiration of 6 weeks from the date on which the notice was served, or such longer period as the Department may on his application allow, to take the action specified in the notice, the Department may enter and take that action.

(3) Where, in consequence of compliance with a requirement imposed by a notice under paragraph (1), a person other than the owner of the pipe-line suffers loss by reason of damage to, or disturbance in the enjoyment of, any land or chattels, he shall be entitled to compensation in respect of that loss from the owner of the line.

(4) Where, in consequence of the exercise by the Department of its powers under paragraph (2) in relation to a pipe-line or length thereof, a person other than the owner of the pipe-line suffers loss by reason of damage to, or disturbance in the enjoyment of, any land or chattels, he shall be entitled to compensation in respect of that loss from the Department.

(5) The Department may recover from the owner of a pipe-line on whom a notice has been served under paragraph (1)—

- (a) the expenses reasonably incurred by the Department in taking action under paragraph (2); and
- (b) the amount of any compensation paid by the Department under paragraph (4).

**Prohibition by Department of use or testing of pipe-line**

**55.**—(1) The Department may at any time by notice served on the owner of a pipe-line prohibit the use or testing of the pipe-line, or of any length of pipe-line, unless there are satisfied such requirements as may be specified in the notice for the purpose mentioned in paragraph (2).

(2) The purpose referred to in paragraph (1) is that of ensuring that funds are available to discharge any liability that may arise in respect of damage attributable to the release or escape of gas from the pipe-line or length.

(3) Paragraphs (3) to (5) of Article 50 shall apply in relation to a notice served under paragraph (1) of this Article as they apply in relation to a notice served under paragraph (1) of that Article.

(4) If a pipe-line is used or tested in contravention of a prohibition imposed by a notice under paragraph (1) then, unless he shows that he used due diligence to avoid contravention, the owner shall be guilty of an offence.

(5) A person guilty of an offence under this Article shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

*Avoidance of damage to pipe-lines by buildings, &c.*

**Power of Department, where pipe-line imperilled by building or structure, to order demolition thereof or execution of remedial works**

**56.**—(1) If, without the consent of the Department, a person so erects or constructs a building or structure that a part of it is situated less than 3 metres from a point on the surface of land whose position is vertically above a part of a pipe-line below the surface, the provisions of paragraphs (2) to (5) shall have effect, except in a case where paragraph (6) applies.

(2) The Department may serve on the owner or owners of the building or structure in question and on the owner of the pipe-line notice of the time (being some time not less than 21 days from the date of the service of the notice) and place at which the question of ordering the building or structure to be demolished or (in lieu thereof) works to be executed for the safeguarding of the pipe-line will be considered by the Department, and the owners of the building or structure and the owner of the pipe-line shall be entitled to be heard when that question is so considered.

(3) If, after taking that question into consideration, the Department is satisfied that it is impracticable to safeguard the pipe-line in question otherwise than by means of the demolition of the building or structure in question or of a part thereof, it may make a demolition order requiring that the building or structure or that part thereof shall be demolished, and that (in the case of a building) the building, or such part thereof as is required to be vacated for the purposes of the demolition, shall be vacated within 2 months from the date which the order becomes operative.

(4) If, after taking that question into consideration, the Department is satisfied that the pipe-line in question can be safeguarded by the execution to the building or structure in question of any works in lieu of the demolition thereof (in whole or in part), it may make an order requiring the execution thereto of such works as may be specified in the order.

(5) If, after taking that question into consideration, the Department is satisfied that the pipe-line in question can be safeguarded by the execution, in lieu of the demolition (in whole or in part) of the building or structure in question, of works to the pipe-line, it may make an order requiring the execution thereto of such works as may be specified in the order.

(6) Paragraphs (2) to (5) shall not have effect in the case of—

- (a) a building or structure forming part of a pipe-line or erected or constructed for the lodging therein of part of a pipe-line, being a building or structure no part of which is situated less than 3 metres from a point on the surface of land whose position is vertically above a part of another pipe-line below the surface; or
- (b) a building or structure in which a pipe-line or any part of a pipe-line is terminated.

(7) Where the Department makes an order under this Article, it shall—

- (a) in the case of an order under paragraph (3) or (4), serve a copy of it on the owner of the building or structure in question; and
- (b) in the case of an order under paragraph (5), serve a copy of it on the owner of the pipe-line in question.

(8) Schedule 4 shall have effect in relation to demolition orders under paragraph (3) and orders under paragraphs (4) and (5).

#### **Power of the Department to remove deposits imperilling pipe-line**

**57.**—(1) Subject to paragraph (2), if, without the consent of the Department, a person so deposits any earth, refuse, spoil or other materials that any of the materials deposited are situated less than 3 metres from a point on the surface of land whose position is vertically above a part of a pipe-line below the surface, the Department may—

- (a) enter and remove the materials deposited; and
- (b) recover the expenses reasonably incurred by it in so doing from the owner of the land on which the materials were deposited or, if there is more than one owner, from the owners thereof in such shares as the court may determine to be just and equitable.

(2) Paragraph (1) does not apply to materials deposited—

- (a) for the purposes or in the course of agricultural operations, not being operations for the storage of crops, grass or silage; or
- (b) in the course of executing street works within the meaning of the Street Works (Northern Ireland) Order 1995.

(3) An owner of land who pays to the Department the full amount of a claim by it under paragraph (1) may recover from any other owner of the land such contribution, if any, as the court may determine to be just and equitable.

(4) The county court within whose jurisdiction the land is situated shall have jurisdiction to hear and determine any proceedings under paragraph (1) or (3); and in determining for the purposes of either of those paragraphs the shares in which any expenses shall be paid or contributed by two or more owners of any land, a county court shall have regard to their respective interests in the land and all the other circumstances of the case.

#### **Compensation in respect of restrictions under Articles 56 and 57**

**58.**—(1) Where works for the construction of a pipe-line have been executed (whether before or after the coming into operation of this Article) and the value of an interest in land is depreciated in consequence of restrictions taking effect by virtue of Article 56(1) or 57(1) being an interest subsisting at the time when those restrictions take effect as respects that land, then, subject to paragraph (2), there shall be payable in respect of that interest by the owner of the pipe-line compensation of an amount equal to the amount of the depreciation.

(2) Paragraph (1) shall not apply—

- (a) where land is acquired, whether compulsorily or by agreement, for the purpose of placing therein a length of pipe-line, to land which, immediately before the acquisition, comprised or was held with the land so acquired;
- (b) to land comprising or held with land over which a right to place therein a length of pipe-line has been acquired, whether compulsorily or by agreement (otherwise than by virtue of the acquisition of the land).

#### *Information, hearings and notices*

#### **Notification of abandonment, cesser of use and beginning or resumption of use of pipe-lines or lengths thereof**

**59.**—(1) Subject to paragraph (2), in any of the following events, namely—

- (a) the beginning of the use of a pipe-line or a length thereof;
- (b) the abandonment of a pipe-line or a length thereof;
- (c) the expiration of 3 years from the date on which a pipe-line or a length thereof was last used;
- (d) the resumption of the use of a pipe-line or a length thereof after the abandonment of the line or length (as the case may be) or after the expiration of 3 years from the date on which it was last used,

the owner of the line shall, within 2 weeks after the happening of the event, give to the Department notice thereof specifying the date on which it happened and the line or length in question.

(2) Where a pipe-line or a length thereof is abandoned after the date on which the line or length (as the case may be) was last used but before the expiration of 3 years from that date, it shall not be necessary to give, under paragraph (1), notice of the expiration of that period.

(3) A person who fails to comply with paragraph (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **Fire authority, police, etc., to be notified of certain pipe-line accidents and to be furnished with information**

**60.**—(1) It shall, in the case of every pipe-line, be the duty of the owner thereof to make, and to ensure the efficient carrying out of, arrangements whereby, in the event of the accidental escape or the ignition of any gas in the line, immediate notice of the event is given—

- (a) to the Fire Authority for Northern Ireland;
- (b) to the Royal Ulster Constabulary; and
- (c) to any other body which the Department, by notice served on the owner of the line, requires him to treat, for the purposes of this Article as relevant in relation to the line, being a body in the case of which it is stated in the notice that the Department is satisfied that it will or may have, in consequence of the happening of the event, to take in the public interest steps for such purpose as may be specified in the notice.

(2) It shall be the duty of the owner of a pipe-line if requested so to do by any body for whose notification, in the event specified in paragraph (1), arrangements are thereby required to be made, to furnish the body with such maps, and to give it such information, as it may reasonably require in order—

- (a) in the case of the Fire Authority or the Royal Ulster Constabulary, to enable it efficiently to discharge the duties falling to be discharged by it in consequence of the happening of the event;
- (b) in the case of any other body which the owner is, by a notice served under paragraph (1) (c), required to treat, for the purposes of this Article as relevant in relation to the line, to enable it efficiently to take, in consequence of the happening of the event, steps for the purpose specified in the notice.

(3) A person who fails to comply with a duty imposed on him under paragraph (1) or (2) shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

#### **Notification of change of ownership of pipe-line**

**61.**—(1) Where a change occurs in the ownership of a pipe-line, the owner of the line shall, within 3 weeks from the date on which the change occurs, give to the Department and to every prescribed person or person of a prescribed class or description a notice stating the particulars of the change.

(2) A person who fails to comply with a duty imposed on him under paragraph (1) shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

### **Regulations as to hearings under this Part**

**62.** The Department may by regulations make provision as to the procedure to be followed in relation to any hearing under this Part.

### **Provisions as to requirements and prohibitions imposed under this Part**

**63.** Any power, exercisable by notice, conferred by this Part on the Department to impose a requirement or prohibition shall be construed as including a power, exercisable in the like manner, to vary or revoke the requirement or prohibition.

## *Miscellaneous*

### **Standards of quality**

**64.—**(1) The Department may prescribe—

- (a) standards of pressure, purity, odour and calorific value to be complied with by authorised persons in conveying gas to premises;
- (b) other standards with respect to the properties, condition and composition of gas so conveyed.

(2) The Department may prescribe—

- (a) standards of pressure, purity, odour and calorific value to be complied with by persons (“relevant suppliers”) in supplying to premises gas which is conveyed through pipes to the premises otherwise than by an authorised person; and
- (b) other standards with respect to the properties, condition and composition of gas so supplied.

(3) The Department may appoint competent and impartial persons to carry out tests of—

- (a) gas which is conveyed by authorised persons; and
- (b) gas which is supplied by a relevant supplier to premises and is conveyed through pipes to the premises otherwise than by an authorised person,

for the purpose of ascertaining whether it conforms with the standards prescribed under this Article.

(4) Regulations may make provision—

- (a) for requiring such tests to be carried out at such places as the Department may direct;
- (b) for requiring such premises, apparatus and equipment as the Department may direct to be provided and maintained by authorised persons and by relevant suppliers for the purpose of carrying out such tests;
- (c) for persons representing the authorised person or relevant supplier concerned to be present during the carrying out of such tests;
- (d) for the manner in which the results of such tests are to be made available to the public; and
- (e) for conferring powers of entry on property of authorised persons and relevant suppliers for the purpose of deciding where tests are to be carried out and otherwise for the purposes of this Article.

(5) Every person who is an authorised person or a relevant supplier during any period shall pay to the Department such proportion as the Department may determine of—

- (a) any sums paid by it on account of the remuneration, allowances and pensions of persons appointed under paragraph (3) in respect of that period; and
- (b) such part of its other expenses for that period as it may with the consent of the Department of Finance and Personnel determine to be attributable to its functions in connection with the testing of gas for the purposes of this Article;

and any liability under this paragraph to pay to the Department sums on account of pensions shall, if the Department so determines, be satisfied by way of contributions calculated, at such rate as may be determined by the Department of Finance and Personnel, by reference to remuneration.

(6) Regulations under this Article may impose a duty on an authorised person, in the case of any alteration in the calorific value in respect of any gas conveyed by him to any premises, to take at his own expense such steps as may be necessary to alter, adjust or replace the burners in the appliances in those premises, in such manner as to secure that the gas can be burned with safety.

(7) In this Article—

“authorised person” means the holder of a licence under Article 8(1)(a) acting under the authority of that licence or a person authorised to convey gas in pursuance of an exemption under Article 7 acting under the authority of that exemption;

“calorific value”, in relation to any gas, means the number of megajoules (gross) which would be produced by the combustion of one cubic metre of the gas measured at a temperature of 15°C and a pressure of 1013.25 millibars, and if the Department so determines, containing such an amount of water vapour as is specified in the determination.

### **Powers of entry**

65. Schedule 5 shall have effect.

## **PART IV SUPPLEMENTAL**

### **Repayment of fees**

66.—(1) Regulations under this Order which prescribe any fee for the purpose of any provision of this Order may make provision for the repayment of any such fee paid or purported to be paid, in pursuance of that provision of this Order, including provision—

- (a) that repayment shall be made only if a specified person is satisfied that specified conditions are met or in other circumstances;
- (b) that repayment shall be made in part only;
- (c) that, in the case of partial repayment, the amount repaid shall be a specified sum or determined in a specified manner; and
- (d) for repayment of different amounts in different circumstances.

(2) In this Article “specified” means specified in the regulations.

### **Compensation**

67.—(1) Where any dispute arises as to whether compensation is payable under this Order, or as to the amount of any such compensation, or as to the persons to whom it is payable, the dispute shall be referred to and determined by the Lands Tribunal.

(2) Articles 4 and 5 of the Land Compensation (Northern Ireland) Order 1982 shall apply, with appropriate modifications, to any such determination.

### **Application to Crown land**

**68.**—(1) Subject to paragraphs (2) to (4), the provisions of this Order shall have effect in relation to Crown land as they have effect in relation to land which is not Crown land.

(2) The powers conferred by or under Schedule 2 shall not be exercisable in relation to Crown land, to the extent of the estate therein held by or on behalf of the Crown.

(3) The powers conferred by or under—

- (a) Schedules 2 and 3; and
- (b) subject to paragraph (4), Schedule 5,

shall not, except with the consent of the appropriate authority, be exercisable in relation to Crown land.

(4) The powers conferred by or under Schedule 5 shall, without the consent of the appropriate authority, be exercisable in relation to Crown land, to the extent of any estate therein for the time being held otherwise than by or on behalf of the Crown.

(5) For the purposes of paragraph (1) a Northern Ireland department may dispose of land vested in that department on such financial and other conditions as that department may consider appropriate.

(6) In this Article any reference to the Crown includes a reference to the Crown in right of Her Majesty's Government in Northern Ireland.

(7) In this Article—

“the appropriate authority”, in relation to any land, means—

- (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners;
- (b) in the case of any other land belonging to Her Majesty in right of the Crown, the government department having the management of that land;
- (c) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, that government department;

and, if any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Department of Finance and Personnel or, as the case may be, the Treasury, whose decision shall be final;

“Crown estate” means an estate—

- (a) belonging to Her Majesty in right of the Crown; or
- (b) belonging to a government department or held in trust for Her Majesty for the purposes of a government department;

“Crown land” means land in which there is a Crown estate.

(8) A person who is entitled to occupy Crown land by virtue of a licence in writing shall be treated for the purposes of this Article as having an estate in land.

### **Regulations and orders**

**69.**—(1) Any regulations or orders made by the Department under this Order (other than vesting orders under Part I of Schedule 2 or orders to which paragraph (2) applies) shall be subject to negative resolution.

(2) The Statutory Rules (Northern Ireland) Order 1979 shall not apply to any order made by the Department under—

- (a) Article 7; or
- (b) paragraph 13(6) of Schedule 3.

(3) Any regulations made by the Director under this Order shall be laid before the Assembly by the Department and shall be subject to negative resolution.

(4) Regulations made under any provision of this Order may provide for the determination of questions of fact or of law which may arise in giving effect to the regulations and for regulating (otherwise than in relation to any court proceedings) any matters relating to the practice and procedure to be followed in connection with the determination of such questions, including provision

- (a) as to the mode of proof of any matter;
- (b) as to parties and their representation;
- (c) for the right to appear before and be heard by the Department, the Director and other authorities; and
- (d) as to awarding costs of proceedings for the determination of such questions, including the amount of the costs and the enforcement of the awards.

(5) Regulations made under any provision of this Order which prescribe a period within which things are to be done may provide for extending the period so prescribed.

(6) Regulations made under any provision of this Order may—

- (a) provide for anything falling to be determined under the regulations to be determined by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons as may be prescribed;
- (b) make such supplemental, consequential and transitional provision as the Department or, as the case may be, the Director considers appropriate.

(7) Regulations made under any provision of this Order may provide that any person contravening the regulations shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Directions**

**70.**—(1) It shall be the duty of any person to whom a direction is given under this Order to give effect to that direction.

(2) Any power conferred by this Order to give a direction shall include power to vary or revoke the direction.

(3) Any direction given under this Order shall be in writing.

### **Amendments, transitional provisions, savings and repeals**

**71.**—(1) The statutory provisions set out in Schedule 6 shall have effect subject to the amendments specified in that Schedule.

(2) Without prejudice to section 17(2) of the Interpretation Act (Northern Ireland) 1954, the Department may by order make such modifications of instruments made under statutory provisions as appear to the Department necessary or expedient in consequence of the provisions of this Order; and in this paragraph “instrument” has the meaning assigned to it by section 1 (c) of that Act of 1954.

(3) Without prejudice to sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954, the transitional and saving provisions in Schedule 7 shall have effect.

(4) The statutory provisions set out in Schedule 8 are hereby repealed to the extent specified in column 3 of that Schedule.

(5) Any local or private Act shall, to the extent that it authorises or regulates, or otherwise makes provision in connection with, the supply of gas (within the meaning of Part II), cease to have effect.

*N. H. Nicholls*  
Clerk of the Privy Council

## SCHEDULES

### SCHEDULE 1

Article 4(5).

#### THE DIRECTOR GENERAL OF GAS FOR NORTHERN IRELAND

##### *Remuneration, pensions, etc.*

1.—(1) There shall be paid to the Director such remuneration, and such travelling and other allowances, as the Department may determine.

(2) In the case of any such holder of the office of the Director as may be determined by the Department, there shall be paid such pension, allowance or gratuity to or in respect of him, or such contributions or payments towards provision for such a pension, allowance or gratuity, as may be so determined.

(3) If, when any person ceases to hold office as the Director, the Department determines that there are special circumstances which make it right that he should receive compensation, there may be paid to him a sum by way of compensation of such amount as may be determined by the Department.

(4) The approval of the Department of Finance and Personnel shall be required for the making of a determination under this paragraph.

##### *Staff*

2. The Director may, with the approval of the Department of Finance and Personnel as to numbers, terms and conditions of service, remuneration, pensions and other allowances (if any), appoint such staff as he may determine.

##### *Expenses of the Director and his staff*

3. There shall be paid out of money appropriated by Measure—
- (a) the remuneration of, and any pension, gratuity, travelling or other allowances payable under this Order to or in respect of, the Director and any staff of the Director;
  - (b) any sums payable under this Order to or in respect of the Director; and
  - (c) any expenses duly incurred by the Director or by any of his staff in consequence of the provisions of this Order.

##### *Official seal*

4. The Director shall have an official seal for the authentication of documents required for the purposes of his functions.

##### *Performance of functions*

5. Anything authorised or required by or under this Order or any other statutory provision to be done by the Director, other than the making of a statutory instrument (within the meaning of section 1

of the Interpretation Act (Northern Ireland) 1954), may be done by any member of the staff of the Director who is authorised generally or specially in that behalf by the Director.

*Rule-making authority*

6. In the Statutory Rules (Northern Ireland) Order 1979, in Schedule 1 (authorities who are rule-making authorities), in the Part headed “Other authorities” there shall be inserted (at the appropriate place) the following entry—

“The Director General of Gas for Northern Ireland.”.

*The Northern Ireland Parliamentary Commissioner*

7. In the Parliamentary Commissioner Act (Northern Ireland) 1969, in Schedule 1 (departments and authorities subject to investigation), at the end there shall be added the following entry—

“Office of the Director General of Gas for Northern Ireland.”.

*Assembly disqualification*

8. In the Northern Ireland Assembly Disqualification Act 1975, in Part III of Schedule 1 (other disqualifying offices), there shall be inserted (at the appropriate place) the following entry—

“Director General of Gas for Northern Ireland.”.

SCHEDULE 2

Article 13(1).

COMPULSORY ACQUISITION OF LAND

PART I

COMPULSORY ACQUISITION OF LAND BY LICENCE HOLDERS

1. –

(1) Where a licence holder proposes to acquire, otherwise than by agreement, any land required for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, he may apply to the Department for an order (“a vesting order”) vesting that land in him and the Department shall have power to make a vesting order.

(2) The power of acquiring land compulsorily under this paragraph includes power to acquire, by the creation of a new right, an easement or other right over land.

2.—(1) No application shall be made under paragraph 1 for a vesting order in respect of land belonging to another licence holder except with the consent of the Director.

(2) The Director shall not give his consent under this paragraph if—

(a) the land is being used by the licence holder to whom it belongs for the purposes of an installation necessary for the carrying on of the activities which he is authorised by his licence to carry on; or

(b) it appears to the Director that the land will be so used and that the use will commence, or any necessary planning permission under Part IV of the Planning (Northern Ireland)

Order 1991 will be applied for, within the period of 5 years from the date of the application for his consent.

(3) The Department may, by order, provide that sub-paragraph (2) shall have effect as if for the period mentioned in head (b) there were substituted such other period as may be specified in the order.

(4) A consent under this paragraph which is not acted on within the period of 6 months from the day on which it is granted shall cease to have effect at the end of that period.

3.—(1) The power to make a vesting order under paragraph 1 in respect of land—

- (a) which is the property of any public body which has power under any statutory provision to acquire land compulsorily; or
- (b) which is declared by or under any statutory provision to be inalienable;

shall not, where representations objecting to the proposal for making the order have been duly made by the owner of the land and have not been withdrawn, be exercised in relation to that land unless the proposal for making the order has been approved by a resolution of the Assembly.

(2) In this paragraph “public body” means a body established by or under any statutory provision.

4.—(1) Nothing in this Schedule shall authorise the acquisition, without the consent of the Department of the Environment, of any land on or in which there is, to the knowledge of the Department, any historic monument or archaeological object.

(2) In this paragraph “historic monument” and “archaeological object” have the same meanings as in the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995.

5.—(1) Where a licence holder has acquired any land under paragraph 1, he shall not dispose of it except with the consent of the Director.

(2) A consent under this paragraph may be subject to such conditions as appear to the Director to be requisite or expedient.

6. Schedule 6 to the Local Government Act (Northern Ireland) 1972 shall apply for the purposes of the acquisition of land by means of a vesting order made under paragraph 1 in the same manner as it applies to the acquisition of land by means of a vesting order made under that Act subject to the following modifications—

- (a) for any reference to the council there shall be substituted a reference to the licence holder;
- (b) for any reference to the Department concerned there shall be substituted a reference to the Department;
- (c) for any reference to that Act there shall be substituted a reference to this Order;
- (d) in paragraph 6(2) for the words from “the fund” onwards there shall be substituted “funds of the licence holder (in this Schedule referred to as “the compensation fund”), and shall be discharged by payments made by the licence holder”; and
- (e) in paragraph 12(2) for “the clerk of the council” there shall be substituted “such person as may be designated for the purposes of this Schedule by the licence holder”.

## PART II

### LICENCE HOLDERS' LAND EXCLUDED FROM COMPULSORY ACQUISITION

7. Where—

- (a) an application for a vesting order is made by a person with power to acquire land otherwise than by agreement (other than a licence holder) in respect of land which includes land belonging to a licence holder and used for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on; and
  - (b) that licence holder has made a representation to the Department concerned before the expiration of one month from the date of the last publication of the notice mentioned in paragraph 2(a) of Schedule 6 to the Local Government Act (Northern Ireland) 1972,
- the Department concerned shall not make the vesting order unless the Department has certified—
- (i) that the land can be purchased and not replaced without serious detriment to the carrying on of those activities; or
  - (ii) that, if purchased, the land can be replaced by other land belonging to, or available for acquisition by, the licence holder without serious detriment to the carrying on of those activities.

### SCHEDULE 3

Article 13(1).

#### OTHER POWERS ETC., OF LICENCE HOLDERS

##### *Interpretation*

**1.—(1)** In this Schedule—

“controlled works” means any such works as are mentioned in paragraph 2(1) being works done under the right conferred by that paragraph;

“electrical plant” and “electric line” have the same meaning as in the Electricity (Northern Ireland) Order 1992;

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

“emergency works” means—

- (a) in relation to a licence holder, work arising from faults in any gas apparatus;
- (b) in relation to an electricity licence holder for the purpose of paragraph 4, work arising from faults in any electric lines or electrical plant;
- (c) in relation to a government department for the purpose of paragraph 4, work requisite to put an end to, or prevent, the arising of circumstances which are likely to cause—
  - (i) danger to persons or property, or
  - (ii) interference with the exercise of any functions conferred on that department;
- (d) in relation to a public telecommunications operator for the purpose of paragraph 4, work requisite to put an end to, or prevent, the arising of circumstances which are likely to cause—
  - (i) danger to persons or property, or
  - (ii) the interruption of any service provided by the telecommunication system of the operator;

“gas apparatus” means—

- (a) pipes and other conduits for the conveyance of gas;

(b) pressure governors, ventilators and other apparatus used for, or in connection with, the conveyance or supply of gas;

“in”, in a context referring to works or apparatus in a street or land, includes a reference to works or apparatus under, over, across, along or upon it;

“plan” includes section;

“planning permission” means planning permission under Part IV of the Planning (Northern Ireland) Order 1991;

“public telecommunications operator” has the same meaning as in the Telecommunications Act 1984;

“sewer” means a sewer as defined in the Water and Sewerage Services (Northern Ireland) Order 1973;

“street” has the same meaning as in the Street Works (Northern Ireland) Order 1995;

“telecommunication apparatus” and “telecommunication system” have the same meaning as in the Telecommunications Act 1984;

“telecommunications code” means the code contained in Schedule 2 to the Telecommunications Act 1984.

(2) In this Schedule, references to the alteration of any apparatus include references to the moving, removal or replacement of the apparatus.

(3) References in this Schedule to arbitration are to arbitration by an arbitrator appointed by agreement between the parties concerned or, in default of agreement, by the President of the Institution of Civil Engineers.

#### *Works involving breaking up streets*

2.—(1) Subject to the Street Works (Northern Ireland) Order 1995 and to the following provisions of this paragraph, for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, a licence holder may execute—

(a) the following kinds of works, that is to say, installing in any street and inspecting, maintaining, adjusting, repairing or altering—

(i) any gas apparatus; and

(ii) any structures for housing or covering any such apparatus; and

(b) any works requisite for or incidental to the purposes of any works falling within head (a), including for those purposes—

(i) opening or breaking up any street or any sewers, drains or tunnels in any street;

(ii) tunnelling or boring in any street; and

(iii) removing or using all earth and materials in any street.

(2) Nothing in this paragraph shall empower a licence holder to lay down or place any gas apparatus into, through or against any building, or in any land not dedicated to the public use, without the consent of the owners and occupiers thereof; but a licence holder may alter, repair or replace any existing apparatus in any land where the apparatus has been placed under this Order or any other statutory provision.

*Alteration of apparatus, etc., under streets*

3.—(1) Subject to sub-paragraph (2), a licence holder may, subject to and in accordance with the provisions of this paragraph unless otherwise agreed upon between the parties, alter the position of—

- (a) any gas apparatus under the control of another licence holder;
- (b) any electric line or electrical plant under the control of an electricity licence holder;
- (c) any telecommunication apparatus used for the purposes of a telecommunication system which is operated by a person to whom the telecommunications code applies; or
- (d) any other apparatus (except any pipe forming part of any sewer),

in any street which interferes with the exercise of his powers under this Schedule.

(2) In the case of an alteration under this paragraph of any telecommunication apparatus used for the purposes of a telecommunication system which is operated by a person to whom the telecommunications code applies, paragraph 23 of the telecommunications code shall apply instead of sub-paragraphs (3) to (13).

(3) One month before commencing the alterations, except where the alterations are emergency works, the licence holder shall—

- (a) serve a notice on the person for the time being entitled to the gas apparatus, electric line, electrical plant, telecommunication apparatus or other apparatus (in this paragraph referred to as “the owners”) describing the proposed alterations; and
- (b) give any further information required by the owners.

(4) The notice mentioned in sub-paragraph (3) shall contain a plan showing the manner in which it is intended that the alterations shall be made.

(5) Within 3 weeks from the service of the notice mentioned in sub-paragraph (3) upon any owners, the owners may require, by requisition served on the licence holder, that any question arising upon the notice as to the works, or to compensation in respect thereof, or any other question shall, in default of agreement, be determined by arbitration.

(6) Where—

- (a) no requisition is served on the licence holder; or
- (b) after any requisition has been served, any question required to be determined by arbitration has been so determined,

the licence holder may, upon paying or securing any compensation which he may be required to pay or secure, carry out the alterations specified in the notice, but subject in all respects to the provisions of this Schedule, and only in accordance with the notice served by him or such modifications thereof as may have been determined by arbitration, or as may be agreed upon between the parties.

(7) At any time before the licence holder is entitled to commence any such alterations, the owners may serve a notice on the licence holder, stating that they desire to execute the alterations, and where any such notice has been served on the licence holder, he shall not be entitled to execute the alterations, except—

- (a) where the licence holder has required the owners to execute the alterations, and the owners have refused or neglected to comply; or
- (b) where the alterations are emergency works.

(8) Where a notice such as is mentioned in sub-paragraph (7) has been served on the licence holder, he shall, not more than 48 hours and not less than 24 hours before the execution of the alterations is required to be commenced, serve on the owners a requisition stating the time when the alterations are required to be commenced, and the manner in which the alterations are required to be made.

(9) Upon receipt of any requisition, the owners may execute the alterations as required by the licence holder, subject to the restrictions and conditions, so far as they are applicable, to which the licence holder would be subject in executing the alterations.

(10) If the owners decline or, for 24 hours after the time when any such alterations are required to be commenced, neglect to comply with the requisition, the licence holder may execute the alterations in like manner as he might have done if notice had not been served on him under sub-paragraph (7) by the owners.

(11) Where any alterations are emergency works the licence holder may execute them without serving any requisition on the owners; but in that case the licence holder shall, within 24 hours after commencing to execute the alterations, give notice thereof to the owners.

(12) All expenses properly incurred by any owners in complying with any requisition of the licence holder under sub-paragraph (8) shall be a debt recoverable summarily by them from the licence holder.

(13) If the licence holder commences the execution of any work in contravention of sub-paragraph (3)(a), he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### *Alteration of gas apparatus under streets*

4.—(1) An electricity licence holder, government department, public telecommunications operator, or other person (not being another licence holder) authorised under any statutory provision to exercise functions in relation to a street may, subject to and in accordance with the provisions of this paragraph unless otherwise agreed upon between the parties, alter the position of any gas apparatus under the control of a licence holder under that street which interferes with the exercise of those functions.

(2) Sub-paragraphs (3) to (12) of paragraph 3 shall apply for the purposes of sub-paragraph (1) of this paragraph as if—

- (a) any reference to the licence holder were a reference to the electricity licence holder, government department, public telecommunications operator or other person, as the case may require; and
- (b) any reference to the owners were a reference to the licence holder.

(3) If the electricity licence holder, public telecommunications operator or, as the case may be, the other person commences the execution of any work in contravention of paragraph 3(3)(a) as applied by sub-paragraph (2) of this paragraph, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### *Controlled works in a street near to apparatus*

5.—(1) The following provisions of this paragraph apply where a licence holder requires to carry out any controlled works in a street near to—

- (a) any gas apparatus of any other licence holder;
- (b) any electric lines or electrical plant of any electricity licence holder; or
- (c) any telecommunication apparatus which is operated by a person to whom the telecommunications code applies; or
- (d) any other apparatus belonging to or under the jurisdiction or control of a government department or other person (not being a licence holder).

(2) Where the licence holder finds it necessary to undermine but not alter the position of any gas apparatus, electric line, electrical plant, telecommunication apparatus or other apparatus he shall temporarily support it in position during the execution of the works, and before completion provide a suitable and proper foundation for it where so undermined.

(3) Any question arising under this paragraph shall, in default of agreement, be determined by arbitration.

*Works in a street near to gas apparatus*

6.—(1) The following provisions of this paragraph apply where an electricity licence holder, government department, public telecommunications operator or other person (not being a licence holder) requires to carry out any works in a street for laying down or constructing any electrical plant or electric lines or any telecommunications apparatus or other apparatus near to any gas apparatus of a licence holder.

(2) Where the electricity licence holder, government department, public telecommunications operator or other person finds it necessary to undermine but not alter the position of any gas apparatus he or it shall temporarily support the apparatus in position during the execution of the works, and before completion provide a suitable and proper foundation for it where so undermined.

(3) Where the electricity licence holder, government department, public telecommunications operator or other person lays any electric line crossing or liable to touch any gas apparatus belonging to the licence holder, the conducting portion of the electric line shall be effectively insulated in a manner approved by the Department, and the electricity licence holder, government department, public telecommunications operator or other person shall not, except with the consent of the licence holder and the Department—

- (a) lay the electric lines so as to come into contact with the gas apparatus; or
- (b) use the gas apparatus in connection with the supply of electricity.

(4) Any question arising under this paragraph shall, in default of agreement, be determined by arbitration.

*Emergency works*

7.—(1) Where any person would be required to serve any notice in respect of any works under paragraph 3 or 4 if the works were not emergency works, that person shall serve a notice in respect of the emergency works as soon as practicable after commencing the works.

(2) Failure to serve the notice required by sub-paragraph (1) shall be treated as a contravention of a requirement of the paragraph under which a notice would be required if the works were not emergency works.

*Protection from interference*

8.—(1) Subject to sub-paragraph (2), a licence holder who carries out any controlled works shall take all reasonable precautions for securing that those works do not interfere with the operation of any telecommunication apparatus which—

- (a) is under the control of a person to whom the telecommunications code applies; and
- (b) is not unusually sensitive to interference with its operation.

(2) In the case of any telecommunication apparatus which is subsequently installed or altered or whose mode of operation is subsequently changed, the duty imposed by sub-paragraph (1) shall not apply in relation to—

- (a) any momentary interference with its operation; or
- (b) where it is installed in unreasonably close proximity to the gas apparatus, any other interference with its operation.

(3) Subject to sub-paragraph (4), a person to whom the telecommunications code applies who installs or alters, or changes the mode of operation of, any telecommunications apparatus shall take all reasonable precautions for securing that the operation of that apparatus does not interfere with the operation of any gas apparatus which—

- (a) is under the control of a licence holder; and
- (b) is not unusually sensitive to interference with its operation.

(4) In the case of any gas apparatus which is subsequently installed or altered or whose mode of operation is subsequently changed, the duty imposed by sub-paragraph (3) shall not apply in relation to—

- (a) any momentary interference with its operation; or
- (b) where it is installed in unreasonably close proximity to the telecommunications apparatus, any other interference with its operation.

(5) Any difference arising under this paragraph between a licence holder and a person to whom the telecommunications code applies shall be determined by arbitration.

(6) In this paragraph “momentary interference” means any interference of momentary duration which is not a regular occurrence (whether caused by physical contact or otherwise).

#### *Modification of paragraphs 2 to 8*

9. The provisions of paragraphs 2 to 8 may be modified by regulations.

#### *Acquisition of wayleaves*

10.—(1) This paragraph applies where—

- (a) for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, it is necessary or expedient for a licence holder to install and keep installed any gas apparatus in any land; and
- (b) the owner or occupier of the land, having been given a notice under sub-paragraph (3),—
  - (i) has failed to give-the necessary wayleave before the end of the period specified in that notice; or
  - (ii) has given the wayleave subject to terms and conditions to which the licence holder objects;

and in this paragraph as it so applies “the necessary wayleave” means consent for the licence holder to install and keep installed the gas apparatus in the land and to have access to the land for the purpose of inspecting, maintaining, adjusting, repairing or altering the apparatus,

(2) This paragraph also applies where—

- (a) for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, it is necessary or expedient for a licence holder to keep any gas apparatus installed in any land; and
- (b) the owner or occupier of the land has given notice to the licence holder under paragraph 12(2) requiring him to remove the apparatus;

and in this paragraph as it so applies “the necessary wayleave” means consent for the licence holder to keep the gas apparatus installed in the land and to have access to the land for the purpose of inspecting, maintaining, adjusting, repairing or altering the apparatus.

(3) The notice referred to in sub-paragraph (1)(b) shall—

- (a) state the licence holder’s intention to install gas apparatus;
- (b) give a description of the nature of the apparatus and of the position and manner in which it is intended to be installed; and
- (c) require the owner or occupier of the land to give the necessary wayleave within a period (not being less than 21 days) specified in the notice.

(4) Subject to sub-paragraphs (5) to (7), the Department may, on the application of the licence holder, grant the necessary wayleave subject to such terms and conditions as the Department thinks fit; and a necessary wayleave so granted shall, unless previously terminated in accordance with a term contained in the wayleave, continue in force for such period as may be specified in the wayleave.

(5) The Department shall not grant a wayleave under sub-paragraph (4) in any case where the land in which the apparatus is to be installed is covered by a dwelling, or will be so covered on the assumption that any planning permission which is in force is acted on.

(6) Sub-paragraph (5) shall not apply to any land in respect of which a wayleave has been granted before the coming into operation of that sub-paragraph.

(7) Before granting a necessary wayleave, the Department shall afford—

- (a) the occupier of the land; and
  - (b) where the occupier is not also the owner of the land, the owner,
- an opportunity of being heard by a person appointed by the Department.

(8) A necessary wayleave granted under this paragraph shall bind any person who is at any time the owner or occupier of the land.

(9) Where in pursuance of a necessary wayleave granted under this paragraph a licence holder has erected on any land supports for any gas apparatus, he shall be deemed to have an estate in that land for the purposes of section 40 of the Mineral Development Act (Northern Ireland) 1969.

(10) In this paragraph “dwelling” means a building or part of a building occupied, or (if not occupied) last occupied or intended to be occupied, as a private dwelling and includes any garden, yard, outhouses and appurtenances belonging to or usually enjoyed with that building or part.

*Provisions supplementary to paragraph 10*

**11.**—(1) Where a wayleave is granted to a licence holder under paragraph 10—

- (a) the occupier of the land; and
  - (b) where the occupier is not also the owner of the land, the owner,
- may recover from the licence holder compensation in respect of the grant.

(2) Where in the exercise of any right conferred by such a wayleave any damage is caused to property, the licence holder shall make good or pay compensation in respect of that damage; and where in consequence of the exercise of such a right a person is disturbed in his enjoyment of any property the licence holder shall pay compensation in respect of that disturbance.

(3) Compensation under this paragraph may be recovered as a lump sum or by periodical payments or partly in one way and partly in the other.

*Temporary continuation of wayleaves*

**12.**—(1) This paragraph applies where at any time such a wayleave as is mentioned in paragraph 10 (whether granted under that paragraph or by agreement between the parties or otherwise)—

- (a) is determined by the expiration of a period specified in the wayleave;
- (b) is terminated by the owner or occupier of the land in accordance with a term contained in the wayleave; or
- (c) by reason of a change in the ownership or occupation of the land after the granting of the wayleave, ceases to be binding on the owner or occupier of the land.

(2) The owner or occupier of the land may—

- (a) in a case falling within sub-paragraph (1)(a), at any time after or within 3 months before the end of the period specified in the wayleave;
- (b) in a case falling within sub-paragraph (1)(b), at any time after the wayleave has been terminated by him; or
- (c) in a case falling within sub-paragraph (1)(c), at any time after becoming the owner or occupier of the land by virtue of such a change in the ownership or occupation of the land as is mentioned in that sub-paragraph,

give to the licence holder a notice requiring him to remove the gas apparatus from the land; but the licence holder shall not be obliged to comply with such a notice except in the circumstances and to the extent provided by the following provisions of this paragraph.

(3) Where within the period of 3 months from the date of the notice under sub-paragraph (2) the licence holder makes neither—

- (a) an application for the grant of the necessary wayleave under paragraph 10; nor
- (b) an application for a vesting order under paragraph 1 of Schedule 2 in respect of the land,

the licence holder shall comply with the notice at the end of that period.

(4) Where—

- (a) within the period mentioned in sub-paragraph (3) the licence holder makes an application for the grant of the necessary wayleave under paragraph 10; and
- (b) that application is refused by the Department,

the licence holder shall comply with the notice under sub-paragraph (2) at the end of the period of one month from the date of the Department's decision or such longer period as the Department may specify.

(5) Where—

- (a) within the period mentioned in sub-paragraph (3) the licence holder makes an application for a vesting order under paragraph 1 of Schedule 2 in respect of the land; and
- (b) that order is not made by the Department,

the licence holder shall comply with the notice under sub-paragraph (2) at the end of the period of one month from the date of the Department's decision or such longer period as the Department may specify.

*Felling and lopping of trees, etc.*

**13.**—(1) This paragraph applies where any tree is or will be in such close proximity to gas apparatus which is kept installed or is being or is to be installed by a licence holder as—

- (a) to obstruct or interfere with the installation, maintenance or working of the apparatus; or

(b) to constitute an unacceptable source of danger (whether to children or to other persons); and in this paragraph “the land” means the land on which the tree is growing.

(2) The licence holder may give notice to the occupier of the land requiring him to fell or lop the tree or cut back its roots so as to prevent it from having the effect mentioned in sub-paragraph (1) (a) or (b), subject to the payment to him by the licence holder of the expenses reasonably incurred by him in complying with the notice.

(3) Where the occupier is not also the owner of the land, a copy of any notice under sub-paragraph (2) shall also be served on the owner.

(4) If within 21 days from the giving of a notice under sub-paragraph (2)

(a) the requirements of the notice are not complied with; and

(b) neither the owner nor occupier of the land gives a counter notice under sub-paragraph (5), the licence holder may cause the tree to be felled or lopped or its roots to be cut back so as to prevent it from having the effect mentioned in sub-paragraph (1)(a) or (b).

(5) If, within 21 days from the giving of a notice under sub-paragraph (2), the owner or occupier of the land gives a counter notice to the licence holder objecting to the requirements of the notice, the matter shall, unless the counter notice is withdrawn, be referred to the Department.

(6) On a reference under sub-paragraph (5), the Department after giving the parties an opportunity of being heard by a person appointed by the Department, may make such order as the Department thinks just, and any such order—

(a) may empower the licence holder (after giving such notice to any person by whom a counter notice was given of the commencement of the work as the order may direct) to cause the tree to be felled or lopped or its roots to be cut back so as to prevent it from having the effect mentioned in sub-paragraph (1)(a) or (b); and

(b) may determine any question as to what expenses (if any) are to be paid.

(7) Where the licence holder exercises any powers conferred under sub-paragraph (4) or (6), he shall—

(a) cause trees to be felled or lopped or their roots to be cut back in accordance with good arboricultural practice and so as to do as little damage as possible to trees, fences, hedges and growing crops;

(b) cause felled trees, lopped boughs or root cuttings to be removed in accordance with the directions of the owner or occupier.

(8) In this paragraph “tree” includes any shrub and references to felling or lopping, felled trees or lopped boughs shall be construed accordingly.

#### *Entry on land for purposes of exploration*

**14.**—(1) Subject to the following provisions of this paragraph and without prejudice to any other right of entry, for the purpose of ascertaining whether the land would be suitable for use for any purpose connected with the carrying on of the activities which the licence holder is authorised by his licence to carry on, a person authorised in writing by a licence holder may, at any reasonable time, enter the land for the purpose of survey and valuation.

(2) A person authorised to enter upon any land under this paragraph shall not demand to do so as of right unless—

(a) 14 days' notice of the intended entry has been given to the occupier; and

(b) if required to do so, he has produced evidence of his authority.

(3) The powers conferred by this paragraph shall not be exercisable in relation to—

- (a) land which is covered by a dwelling or will be so covered on the assumption that any planning permission which is in force is acted on; or
  - (b) land which is covered by a building (other than a dwelling) or will be so covered on the assumption that any planning permission which is in force is acted on except—
    - (i) with consent given by or on behalf of the occupier of the land; or
    - (ii) where the occupier has refused his consent, with the consent of the Department.
- (4) The power to survey land conferred by this paragraph includes power to search and both for the purpose of ascertaining the nature of the subsoil; but works may not be carried out on the land for this purpose unless—
- (a) notice of the proposed works is included in the notice given under sub-paragraph (2); and
  - (b) where land is held by statutory undertakers who object to the works on the ground that the carrying out of the works would be seriously detrimental to the carrying on of their undertaking, with the consent of the Department.
- (5) Where it is proposed to search or bore in pursuance of this paragraph in a street within the meaning of the Street Works (Northern Ireland) Order 1995—
- (a) Article 15 of that Order (notice of starting date of works), so far as it requires notice to be given to a person having apparatus in the street which is likely to be affected by the works,
  - (b) Article 29 of that Order (requirements to be complied with where works likely to affect another person's apparatus in the street), and
  - (c) Article 42 of that Order (liability for damage or loss caused),
- have effect in relation to the searching or boring as if they were street works within the meaning of that Order.
- (6) In this paragraph—
- “building”, except in the definition of “dwelling”, includes any garden, yard, outhouses and appurtenances belonging to or usually enjoyed with a building;
  - “dwelling” means a building or part of a building occupied, or (if not occupied) last occupied or intended to be occupied, as a private dwelling;
  - “statutory undertakers” has the same meaning as in the Planning (Northern Ireland) Order 1991.

*Provisions supplementary to paragraphs 13 and 14*

**15.—(1)** Any person who intentionally obstructs a person acting in the exercise of any power conferred by or under paragraph 13 or 14 shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Where in the exercise of any power conferred by or under paragraph 13 or 14 any damage is caused to property the licence holder shall make good or pay compensation in respect of that damage; and where in consequence of the exercise of such a power a person is disturbed in his enjoyment of any property the licence holder shall pay compensation in respect of that disturbance.

SCHEDULE 4

Article 56.

ORDERS UNDER ARTICLE 56

*Operation and effect of demolition orders*

1.—(1) A demolition order made under Article 56(3) in respect of any building or structure shall become operative upon the service of a copy thereof on the owner of the building or structure.

(2) The owner of any building in respect of which a demolition order is made shall carry out the demolition provided for by the order—

- (a) before the expiration of 6 weeks from the date on which the order becomes operative; or
- (b) if the building, or such part of the building as is required to be vacated, is not vacated until after that date, before the expiration of 6 weeks from the date on which it is vacated,

or (in either case) before the expiration of such longer period as in the circumstances the Department deems reasonable.

(3) The owner of any structure in respect of which a demolition order is made shall carry out the demolition provided for by the order before the expiration of 6 weeks from the date on which the order becomes operative or before the expiration of such longer period as in the circumstances the Department deems reasonable.

(4) If the demolition is not carried out within the time allowed under sub-paragraph (2) or (3) the Department—

- (a) may enter and carry out the demolition; and
- (b) if it does so, shall sell the materials rendered available by the demolition.

(5) Any expenses incurred by the Department under sub-paragraph (4), after giving credit for any amount realised by the sale of materials, may be recovered by it from the owner of the building or structure, or if there is more than one owner, from the owners thereof in such shares as the court may determine to be just and equitable.

(6) An owner of a building or structure who pays to the Department the full amount of its claim may recover from any other owner of the building or structure such contribution, if any, as the court may determine to be just and equitable.

(7) Any surplus in the hands of the Department shall be paid by it to the owner of the building or structure or, if there is more than one owner, shall be paid as those owners may agree or may, in default of agreement, be paid into the county court and may be paid out to the owners by order of the court in such shares as the court may determine to be just and equitable.

*Recovery of possession of buildings subject to demolition order*

2.—(1) Where a demolition order becomes operative, the Department shall serve on the occupier of the building to which the order relates a notice—

- (a) stating the effect of the order,
- (b) specifying the date by which the building is to be vacated, and
- (c) requiring him to quit the building before the said date or before the expiration of 28 days from the service of the notice, whichever may be the later.

(2) If, at any time after the date on which a notice under sub-paragraph (1) requires a building to be vacated, any person is in occupation of the building, the Department or any owner of the building may bring proceedings in the same manner as ejection proceedings under Part VI of the Magistrates' Courts (Northern Ireland) Order 1981 and the court shall, on proof of the service of the

notice and of such occupation, order vacant possession of the building to be given to the Department or owner, but, in doing so, shall stay the issue of the decree for possession for a period of not less than 2 weeks or more than 4 weeks from the date of the order.

(3) Any person who, knowing that a demolition order is in operation in relation to any building, enters into occupation of that building or of any part thereof after the date by which the order requires that building to be vacated or after the date on which the building is in fact vacated, whichever is the earlier, or permits any other person to enter into such occupation after that date, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale and to a further fine not exceeding £10 for every day or part of a day on which the occupation continues after conviction.

*Execution of remedial works by Department in default  
of compliance with order under Article 56(4) or (5)*

**3.—**(1) If a person on whom an order under Article 56(4) or (5) is served fails, before the expiration of 6 weeks from the date on which the order was served, or such longer period as the Department may on his application allow, to execute the works specified in the order, the Department may enter and execute the works.

(2) Where works for the safeguarding of a pipe-line are executed—

- (a) in pursuance of sub-paragraph (1) in default of compliance with such an order as is therein mentioned, or
- (b) in compliance with an order under Article 56(5),

the expenses reasonably incurred by the Department or owner of the pipe-line, as the case may be, in executing the works may be recovered from the owner of the building or structure the erection or construction of which was the cause of the making of the order or, if there is more than one owner, from the owners thereof in such shares as the court may determine to be just and equitable.

(3) An owner of a building or structure who pays to the Department or owner of a pipe-line the full amount of any claim may recover from any other owner of the building or structure such contribution, if any, as the court may determine to be just and equitable.

*Jurisdiction of county court under this Schedule*

**4.—**(1) The county court within whose jurisdiction the building or structure is situated shall have jurisdiction to hear and determine any proceedings under this Schedule.

(2) In determining for the purposes of this Schedule, the shares in which any expenses shall be paid or contributed by two or more owners of any building or structure, a county court shall have regard to their respective interests in the building or structure and all the other circumstances of the case.

SCHEDULE 5

Article 65.

POWERS OF ENTRY, ETC.

*Interpretation*

**1.** In this Schedule—

“gas fittings” means any fittings, apparatus and appliances designed for use by consumers of gas for heating, cooking, lighting, motive power and other purposes for which gas can be used;

“gas system”, in relation to any premises, means any service pipe or other apparatus (not being a gas fitting) which is on the premises and is used for the conveyance or supply of gas to the premises or is connected with a gas main;

“relevant authority”—

- (a) in relation to dangers arising from the conveyance of gas by a relevant licence holder, or from the use of gas conveyed by such a licence holder, means that licence holder or the Department; and
- (b) in relation to dangers arising from the conveyance of gas by a person other than a relevant licence holder, or from the use of gas conveyed by such a person, means that person or the Department;

“relevant licence holder” means the holder of a licence under Article 8(1)(a);

“service pipe” means a pipe which is connected with a gas main for the purpose of conveying gas from that main to any premises.

*Powers of entry, etc.*

2.—(1) The Department may by regulations make provision for empowering any person authorised by the relevant authority—

- (a) to enter any premises in which there is a service pipe connected with a gas main for the purpose of inspecting any gas fitting on the premises, any flue or means of ventilation used in connection with any such gas fitting or any part of the gas system on the premises;
- (b) where he so enters any such premises, to examine or apply any test to any such object as is mentioned in head (a) and (where the object is a gas fitting) to verify what supply of air is available for it; and
- (c) where in his opinion it is necessary to do so for the purpose of averting danger to life or property, and notwithstanding any contract previously existing, to disconnect and seal off any gas fitting or any part of the gas system on the premises, or cut off the supply of gas to the premises.

(2) Regulations under this paragraph shall provide that the power of entry conferred by the regulations may only be exercised where the relevant authority has reasonable cause to suspect that there may be a danger to life or property in connection with the presence or use of gas on the premises in question.

(3) Where any regulations under this paragraph confer any power in accordance with sub-paragraph (1)(c), the regulations shall also include provision—

- (a) for securing that, where any such power is exercised, the consumer will be notified as to the nature of the defect or other circumstances in consequence of which it has been exercised;
- (b) for enabling any consumer so notified to appeal to the Department on the grounds that the defect or other circumstances in question did not constitute a danger such as to justify the action taken in the exercise of the power, or did not exist or have ceased to exist; and
- (c) for enabling the Department to give such directions as may in accordance with the regulations be determined by it to be appropriate in consequence of any such appeal.

(4) Regulations made under this paragraph may make provision for prohibiting any persons, except with the consent of the relevant authority or in pursuance of any directions given by the Department as mentioned in sub-paragraph (3)(c) from—

- (a) reconnecting any gas fitting or any part of any gas system which has been disconnected by or on behalf of the relevant authority in exercise of a power conferred by the regulations; or
- (b) restoring the supply of gas to any premises where it has been cut off by or on behalf of the relevant authority in the exercise of any such power.

**3.—(1)** The Department may by regulations make provision—

- (a) for empowering any person authorised by a relevant licence holder, where that licence holder has reasonable cause to suspect—
  - (i) that gas conveyed by him is escaping, or may escape, in any premises; or
  - (ii) that gas so conveyed which has escaped has entered, or may enter, any premises, to enter the premises, to inspect the gas system and gas fittings, to carry out any work necessary to prevent the escape of gas and to take any other steps necessary to avert danger to life or property; and
- (b) for empowering any person authorised by a relevant licence holder, where that licence holder has reasonable cause to suspect—
  - (i) that gas conveyed by some other person is escaping, or may escape, in any premises; or
  - (ii) that gas so conveyed which has escaped has entered, or may enter, any premises, to enter the premises and to take any steps necessary to avert danger to life or property.

(2) As soon as reasonably practicable after any powers are exercised under sub-paragraph (b) of paragraph (1) by a person authorised by a relevant licence holder, that licence holder shall inform the other person referred to in head (i) of that sub-paragraph.

(3) The Department may by regulations make provision for empowering any person authorised by it, if it has reasonable cause to suspect—

- (a) that gas conveyed by any person other than a relevant licence holder is escaping, or may escape, in any premises; or
- (b) that gas so conveyed which has escaped has entered, or may enter, any premises, to enter the premises, to inspect the gas system and gas fittings, to carry out any work necessary to prevent the escape of gas and to take any other steps necessary to avert danger to life or property.

**4.—(1)** Any person authorised by a relevant licence holder may at all reasonable times, on the production of some duly authenticated document showing his authority, enter any premises to which gas is conveyed by that licence holder for the purpose of—

- (a) ensuring the safety of the gas system on those premises or of gas fittings; or
- (b) carrying out any necessary works of maintenance, repair or renewal of any part of the gas system on those premises;
- (c) in the case of premises where the relevant licence holder has reason to believe that a compressor or compressed air or extraneous gas is being used, inspecting the premises and ascertaining whether any safety requirements imposed by the relevant licence holder on the consumer are being complied with.

(2) In paragraph (1)—

“compressor” means an engine, gas compressor or other similar apparatus or any apparatus liable to produce in any main of the relevant licence holder a pressure less than atmospheric pressure;

“compressed air” means air at high pressure; and

“extraneous gas” means any gaseous substance not conveyed by the relevant licence holder.

(3) Any person authorised by a relevant licence holder, after 24 hours' notice to the owner of any unoccupied premises, may at all reasonable times, on production of some duly authenticated document showing his authority, enter those premises for the purpose of—

- (a) disconnecting any gas fitting or any part of the gas system on the premises or cutting off the supply of gas to the premises; and
- (b) removing any gas fitting or meter belonging to the licence holder.

(4) The notice required to be given by sub-paragraph (3) may, where the owner of the premises is unknown and cannot be ascertained after diligent inquiry, be given by affixing it upon a conspicuous part of the premises not less than 48 hours before the premises are entered.

(5) The powers conferred by this paragraph may only be exercised where the relevant licence holder has reasonable cause to suspect that there may be a danger to life or property in connection with the presence of gas on the premises in question.

#### *Exercise of powers of entry*

5.—(1) A power of entry conferred by or under this Schedule shall not be exercisable except—

- (a) with consent given by or on behalf of the occupier of the premises; or
- (b) under the authority of a warrant granted under paragraph 6;

so, however, that this sub-paragraph shall not apply where entry is sought in the case of emergency.

(2) Any person exercising powers of entry conferred by or under this Schedule may be accompanied by such other persons as may be necessary or expedient for the purpose for which the entry is made, or for the purposes of paragraph 7.

#### *Warrant to authorise entry*

6.—(1) Where a justice of the peace is satisfied by complaint on oath—

- (a) that admission to premises is reasonably required for the purpose specified in the complaint; and
- (b) that a duly authorised person would, apart from paragraph 5, be entitled for that purpose to exercise in respect of the premises a power of entry conferred by or under this Schedule; and
- (c) that—
  - (i) the consent of the occupier has been refused or seeking that consent would defeat the object of the entry; or
  - (ii) the premises are unoccupied;

he may issue a warrant under his hand authorising that duly authorised person to enter the premises.

(2) A warrant granted under this paragraph shall continue in force until—

- (a) the time when the purpose for which the entry is required is satisfied; or
- (b) the end of the period of 28 days from the day on which the warrant is granted,

whichever is the earlier.

#### *Premises to be left secure and damage to be made good*

7. Where, under any powers conferred by or under this Schedule, entry is made on any premises by a duly authorised person—

- (a) he shall ensure that the premises are left no less secure by reason of the entry, and
- (b) the relevant authority or the relevant licence holder (as the case may be) shall make good or pay compensation for any damage to property caused by that person, or by any person accompanying him in entering the premises, in taking any action in the premises authorised by or under this Schedule or in making the premises secure.

*Penalty for obstruction*

8. If any person intentionally obstructs any person exercising powers of entry conferred by or under this Schedule, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

SCHEDULE 6

Article 71(1).

AMENDMENTS

*The Post Office Act 1969 (c. 48)*

In section 7(1A) after paragraph (cc) insert—

- “(cd) a person holding a licence under Article 8(1)(c) of the Gas (Northern Ireland) Order 1996;”.

*The Public Utilities (Emergency Powers) Act (Northern Ireland) 1972 (c. 2 (N.I.))*

In section 1(2) for “undertakers as defined in Article 2(2) of the Gas (Northern Ireland) Order 1977” substitute “a licence holder within the meaning of Part II of the Gas (Northern Ireland) Order 1996”.

*The Fair Trading Act 1973 (c. 41)*

In section 16(1) after paragraph (c) add

“or

- (d) is carried on in connection only with the conveyance or supply of gas by a licence holder within the meaning of Part II of the Gas (Northern Ireland) Order 1996;”.

In section 16(2B) after “1992” insert “or Part II of the Gas (Northern Ireland) Order 1996”.

In section 133(2)(a) after “the Director General of Electricity Supply for Northern Ireland” insert “or the Director General of Gas for Northern Ireland” and after “Electricity (Northern Ireland) Order 1992” insert “or the Gas (Northern Ireland) Order 1996”.

*The Water and Sewerage Services (Northern Ireland) Order 1973 (NI 2)*

In Article 57A(3) after sub-paragraph (bb) insert—

- “(bbb) any holder of a licence under Article 8(1) of the Gas (Northern Ireland) Order 1996.”.

*The Consumer Credit Act 1974 (c. 39)*

In section 174(3)(a) after “Electricity (Northern Ireland) Order 1992” insert “or the Gas (Northern Ireland) Order 1996” and after “Director General of Electricity Supply for Northern Ireland” insert “or the Director General of Gas for Northern Ireland”.

*The Restrictive Trade Practices Act 1976 (c. 34)*

In section 41(1)(a) after “Director General of Electricity Supply for Northern Ireland” insert “or the Director General of Gas for Northern Ireland” and after “Electricity (Northern Ireland) Order 1992” insert “or the Gas (Northern Ireland) Order 1996”.

*The Rates (Northern Ireland) Order 1977 (NI 28)*

After Article 39C insert—

**“Rating of gas licence holders, etc.**

**39D.**—(1) The following powers are exercisable by the Department for the purposes of any valuation list in force on or after the coming into operation of Part II of the Gas (Northern Ireland) Order 1996.

(2) The Department may by order determine what property occupied by an authorised person is to be treated as a hereditament for the purposes of this Order, and an order under this paragraph may—

- (a) determine that two or more separate properties occupied by an authorised person are to be treated for those purposes as a single hereditament; and
- (b) make provision with respect to the apportionment of the amount of the net annual value of that single hereditament among the districts of district councils.

(3) The Department may by order determine the net annual value of the hereditaments occupied by an authorised person or make provision for the manner in which the net annual value of such hereditaments is to be, or may be, determined, and an order under this paragraph may—

- (a) make provision with respect to the apportionment of the aggregate amount of the net annual value determined under the order among the districts of district councils;
- (b) provide for determining the net annual value of any hereditament by the application of different methods of valuation to different parts of the hereditament.

(4) An order under paragraph (2) or (3)—

- (a) may modify or repeal any provision of this Order;
- (b) may contain such incidental, supplementary or consequential provisions as the Department considers necessary or expedient for the purposes of the order;
- (c) shall be made only after consultation with such authorised persons, associations of district councils and district councils as the Department considers appropriate; and
- (d) shall be subject to affirmative resolution.

(5) In this Article “authorised person” means the holder of a licence or an exemption under Part II of the Gas (Northern Ireland) Order 1996.”.

*The Pollution Control and Local Government (Northern Ireland) Order 1978 (NI 19)*

In Article 24(1)—

- (a) in sub-paragraph (a) for “or both” substitute “or gas”;
- (b) in the words following sub-paragraph (c) for “or electricity” substitute “, electricity or gas”.

In Article 24(2) at the end add “or Part II of the Gas (Northern Ireland) Order 1996”.

*The Estate Agents Act 1979 (c. 38)*

In section 10(3)(a) after “Electricity (Northern Ireland) Order 1992” insert “or the Gas (Northern Ireland) Order 1996” and after “Director General of Electricity Supply for Northern Ireland” insert “or the Director General of Gas for Northern Ireland”.

*The Competition Act 1980 (c. 21)*

In section 19(2)(a) after “Director General of Electricity Supply for Northern Ireland” insert “or the Director General of Gas for Northern Ireland”.

In section 19(3) after paragraph (n) insert—

“(nn) the Gas (Northern Ireland) Order 1996;”.

*The Telecommunications Act 1984 (c. 12)*

In section 101(2)(b) after “Director General of Electricity Supply for Northern Ireland” insert “or the Director General of Gas for Northern Ireland”.

In section 101(3) after sub-paragraph (1) insert—

“(11) The Gas (Northern Ireland) Order 1996;”.

*The Airports Act 1986 (c. 31)*

In section 74(2)(a) after “Director General of Electricity Supply for Northern Ireland” insert “or the Director General of Gas for Northern Ireland”.

In section 74(3) after paragraph (m) insert—

“(mm) the Gas (Northern Ireland) Order 1996;”.

In section 62(2)(b) after “above” insert “or Article 8(1)(c) of the Gas (Northern Ireland) Order 1996”.

*The Consumer Protection Act 1987 (c. 43)*

In sections 10(7)(c) and 11(7)(c) at the end add “or under Article 8(1)(c) of the Gas (Northern Ireland) Order 1996”.

In section 38(3) after paragraph (n) insert—

“(nn) the Gas (Northern Ireland) Order 1996;”.

In section 38(6)(b) after “Director General of Electricity Supply for Northern Ireland” insert “or the Director General of Gas for Northern Ireland”.

*The Consumer Protection (Northern Ireland) Order 1987 (NI 20)*

In Article 29(3) after paragraph (m) insert—

“(mm) the Gas (Northern Ireland) Order 1996;”.

In Article 29(6)(b) after “Director General of Electricity Supply for Northern Ireland” insert “or the Director General of Gas for Northern Ireland”.

*The Insolvency (Northern Ireland) Order 1989 (NI 19)*

In Article 197(3) after sub-paragraph (a) insert—

“(aa) a supply of gas by the holder of a licence under Article 8 of the Gas (Northern Ireland) Order 1996;”.

In Article 343(4) after sub-paragraph (a) insert—

“(aa) a supply of gas by a holder of a licence under Article 8 of the Gas (Northern Ireland) Order 1996;”.

*The Planning (Northern Ireland) Order 1991 (NI 11)*

In Article 2(2) insert at the appropriate place in alphabetical order—

““gas undertaker” means a holder of a licence under Article 8 of the Gas (Northern Ireland) Order 1996;”.

In Article 2(2) in the definition of “statutory undertaker” for “any undertaking for the supply of gas” substitute “a gas undertaker”.

In Article 22(2) after sub-paragraph (b) insert—

“(c) by a gas undertaker to lay pipes for the conveyance or supply of gas;”.

*The Electricity (Northern Ireland) Order 1992 (NI 1)*

In Article 61(2)(b) after head (xi) insert—

“(xii) The Director General of Gas for Northern Ireland;”.

In Article 61(3) at the end add—

“(t) the Gas (Northern Ireland) Order 1996.”.

*The Offshore, and Pipelines, Safety (Northern Ireland) Order 1992 (NI 17)*

In Article 4(3) for sub-paragraph (a) substitute—

“(a) in the Gas (Northern Ireland) Order 1996, Articles 50 to 54, 56 to 58, 60, 64 and 65, Part IV (so far as relating to any of those Articles) and Schedules 4 and 5;”.

In Article 4(4) in the definition of “gas” for the words from “means” onwards substitute “has the same meaning as in Part III of the Gas (Northern Ireland) Order 1996”.

*The Roads (Northern Ireland) Order 1993 (NI 15)*

In Article 2(2) in the definition of “statutory undertaker” for paragraph (c) substitute—

“(c) a holder of a licence under Article 8 of the Gas (Northern Ireland) Order 1996;”.

*The Airports (Northern Ireland) Order 1994 (NI 1)*

In Article 49(2)(a) after “the Director General of Electricity Supply for Northern Ireland” insert “, the Director General of Gas for Northern Ireland”.

In Article 49(3) at the end add—

“(q) the Gas (Northern Ireland) Order 1996.”.

SCHEDULE 7

Article 71(3).

TRANSITIONAL AND SAVING PROVISIONS

*Interpretation*

1.—(1) In this Schedule—

“appointed day”, in any provision, means the day appointed under Article 1(2) for the coming into operation of that provision;

“the 1977 Order” means the Gas (Northern Ireland) Order 1977;

“gas undertaker” means an undertaker within the meaning of the 1977 Order and “gas undertaking” means the undertaking of such an undertaker.

(2) Expressions used in this Schedule which are used in Part II of this Order have the same meaning as in that Part.

*Rundown and closure of former gas undertakers*

2. Except as provided by Articles 42 and 43, this Order does not affect the run-down and closure of any gas undertaking in accordance with an agreement entered into before the appointed day under Article 3 of the Gas (Northern Ireland) Order 1985; and the powers of the Department under Articles 5 and 6 of that Order shall continue to be exercisable in pursuance of such an agreement notwithstanding the repeal of the Order of 1985.

*Transitional arrangements for former gas undertakers becoming licence holders under this Order*

3.—(1) This paragraph applies to a person who—

- (a) immediately before the appointed day is a gas undertaker; and
- (b) before the end of the period of 3 months beginning with the appointed day, is granted a licence under Article 8.

(2) The 1977 Order shall, notwithstanding anything in this Order, continue to have effect in relation to a person to whom this paragraph applies until the day on which a licence is granted to him under Article 8.

(3) Where a person to whom this paragraph applies has, before the grant to him of a licence under Article 8, applied to the Department under Article 16 of the 1977 Order for an order vesting land in him, all proceedings under that Schedule in relation to that application may be continued and completed as if this Order had not been made.

(4) Any land compulsorily acquired by a person to whom this paragraph applies under Article 16 of the 1977 Order (whether by virtue of sub-paragraph (3) or otherwise) shall be treated for the purposes of this Order as compulsorily acquired under Part I of Schedule 2.

(5) Where, immediately before the grant to a person to whom this paragraph applies of a licence under Article 8, there is in force an agreement, deed, bond or other instrument which—

- (a) confers or imposes on that person any rights or obligations; and
- (b) refers (in whatever terms and whether expressly or by implication) to any provision of the 1977 Order, to that person’s status as a gas undertaker or to the statutory purposes of his undertaking,

the instrument shall have effect, in relation to anything falling to be done after the grant of that licence, as if that reference included or, as the case may require, were a reference to any corresponding provision of this Order, to his status as a licence holder or to purposes connected with the activities authorised by his licence.

(6) Anything which, immediately before the grant to a person to whom this paragraph applies of a licence under Article 8, is in course of being done—

- (a) under the provisions relating to street works in Schedule 1 to the 1977 Order; or
- (b) with a view to, or otherwise in connection with, the granting of a consent under Article 13 of the 1977 Order,

by, to or in relation to that person (including any legal proceedings to which that person is a party) may be continued and completed under the 1977 Order as if this Order had not been made.

(7) Any street works executed by a person to whom this paragraph applies under the 1977 Order (whether by virtue of sub-paragraph (6) or otherwise) shall be treated for the purposes of this Order as executed under Schedule 3 to this Order.

(8) Any consent granted to a person to whom this paragraph applies under Article 13 of the 1977 Order (whether by virtue of sub-paragraph (6) or otherwise) shall be treated for the purposes of this Order as granted under Schedule 3 to this Order.

*Power to make further transitional provisions*

4. Without prejudice to Article 1(3), the Department may at any time by order make such further transitional provisions as seem to it to be necessary or expedient for the purposes of or in connection with the coming into operation (whether before or after the making of the order) of any provision of this Order.

SCHEDULE 8

Article 71(4).

REPEALS

Chapter or Number	Short title	Extent of repeal
1847 c. 34.	The Towns Improvement Clauses Act 1847.	Sections 119 and 120.
1878 c. 52.	The Public Health (Ireland) Act 1878.	Sections 80 and 81.
1939 c. 15 (N.I.).	The Civil Defence Act (Northern Ireland) 1939.	In section 74(1) in the definition of “public utility undertakers” the words “gas” and “gas or”.
1970 c. 1.	The Harbours Act (Northern Ireland) 1970.	In section 26(5) in the definition of “public utility undertaking” the word “gas”.
1973 NI 2.	The Water and Sewerage Services (Northern Ireland) Order 1973.	In Article 57A(3)(a) the words “or any undertaking for the supply of gas”.
1977 NI 7.	The Gas (Northern Ireland) Order 1977.	The whole Order.
1977 NI 28.	The Rates (Northern Ireland) Order 1977.	In Article 2(2) the definition of “gas undertaking”. Article 2(6) and (7). In Schedule 11, entry 8. In Part III of Schedule 12, in paragraph 3, in Class 5 the words “or a gas undertaking”.

Chapter or Number	Short title	Extent of repeal
		Parts VII and VIII of Schedule 12.
1978 NI 19.	The Pollution Control and Local Government (Northern Ireland) Order 1978.	In Article 53(1) in the definition of “statutory undertakers” the words “or any undertaking for the supply of gas”.
1981 NI 6.	The Judgments Enforcement (Northern Ireland) Order 1981.	In Schedule 2, paragraph 24.
1981 NI 10.	The Weights and Measures (Northern Ireland) Order 1981.	Article 52.
1983 NI 18.	The Access to the Countryside (Northern Ireland) Order 1983.	In Article 2(2) in the definition of “statutory undertakers” the word “gas”.
1984 c. 12.	The Telecommunications Act 1984.	In Schedule 4, paragraph 68.
1984 NI 4.	The Gas (Amendment) (Northern Ireland) Order 1984.	The whole Order.
1985 NI 14.	The Gas (Northern Ireland) Order 1985.	The whole Order.
1986 NI 9.	The Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986.	In Schedule 1, the entry relating to the Gas (Northern Ireland) Order 1977.
1990 NI 10.	The Companies (No. 2) (Northern Ireland) Order 1990.	In Schedule 3, paragraph 7.
1992 NI 17.	The Offshore, and Pipelines, Safety (Northern Ireland) Order 1992.	Article 5(3).
1995 NI 19.	The Street Works (Northern Ireland) Order 1995.	In Schedule 3, the amendments to the Gas (Northern Ireland) Order 1977.

### EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order provides for the regulation of the supply of gas through pipes.