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STATUTORY INSTRUMENTS

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**1996 No. 275**

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

**PART II**

**GAS SUPPLY AND ASSOCIATED ACTIVITIES**

*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.** <sup>F1</sup> .....

**Annotations:**

- F1** Art. 41 revoked (1.3.2005) by Competition Act 1998 (Transitional, Consequential and Supplemental Provisions) Order 2000 (S.I. 2000/311), art. 42(2)

**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.

*Art. 44 rep. by 2003 NI 6*

### **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.

[<sup>F2</sup>(1A) The Department shall, in particular, issue such directions under paragraph (1) as appear to it to be requisite or expedient to ensure that a person who holds a licence under Article 8(1)(a) does not abuse or disclose information contrary to [<sup>F3</sup>Article 16 or 27] of the Directive.]

(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 [<sup>F4</sup>section 1122 of the Corporation Tax Act 2010].

#### Annotations:

- F2** Art. 45(1A) inserted (1.10.2006) by [Gas Order 1996 \(Amendment\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/358\)](#), **reg. 11**
- F3** Words in art. 45(1A) substituted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 88**
- F4** Words in art. 45(8) substituted (1.4.2010 with effect as mentioned in s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), ss. 1177, 1184(1), **Sch. 1 para. 295(3)** (subject to [Sch. 2](#))

#### 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 [<sup>F5</sup>relevant provision], 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.

[<sup>F5</sup>(1A) In paragraph (1) “relevant provision” means—

- (a) any provision of this Part or of any regulations made under this Part; and
- (b) any provision of the Energy (Northern Ireland) Order 2003 or of any regulations made under that Order.]

(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.

**Annotations:**

**F5** [2003 NI 6](#)

**Changes to legislation:**

There are currently no known outstanding effects for the The Gas (Northern Ireland) Order 1996,  
Cross Heading: Miscellaneous.