

ENERGY (NORTHERN IRELAND) ORDER 2003

S.I. 2003 No. 419 (N.I. 6)

EXPLANATORY MEMORANDUM

INTRODUCTION

1. The Energy (Northern Ireland) Order (“the Order”) was made on 27 February 2003.
2. Where appropriate, the provisions of the Order are based on similar provisions of the Utilities Act 2000 which reformed the electricity and gas sectors in Great Britain.

CONSULTATION

3. The Department of Enterprise, Trade and Investment (“the Department”) consulted extensively on the provisions included in the Energy Order. An initial consultation paper entitled “Realising the Potential” (October 2001) focused on the role of renewable energy in Northern Ireland. The responses indicated support for the implementation of a renewables obligation mechanism. A further consultation paper entitled “Towards a New Energy Market Strategy for Northern Ireland” published on 6 March 2002 sought views on the direction of a new energy market strategy for Northern Ireland and priority energy issues requiring legislation. The main priorities identified by the Department in that paper were changes to the regulatory and consumer representation arrangements and postalisation of gas conveyance charges to enable a major project to extend the gas network in Northern Ireland to proceed. These priorities were supported by responses to the consultation paper. All the above consultation papers can be viewed in the energy area of the Department’s website, located at “www.defini.gov.uk/energy”.

PURPOSE OF THE ORDER AND SUMMARY OF MAIN PROVISIONS

4. The Order addresses priority energy policy issues in Northern Ireland by:
 - restructuring Northern Ireland’s current framework of regulatory and consumer representation institutions in the electricity and gas sectors;
 - creating a new regulatory Authority to take over the functions of the Director General of Gas for Northern Ireland and the Director General of Electricity Supply for Northern Ireland and giving it and the Department of Enterprise, Trade and Investment (“the Department”) new principal objectives and duties in exercising their respective functions in each sector;
 - increasing the functions and powers of the General Consumer Council for Northern Ireland to review and provide information concerning energy-related consumer matters and to investigate such matters;
 - facilitating the amendment of the licensing regime in both the electricity and gas sectors;
 - enhancing the enforcement powers of the Authority in relation to the breach by electricity and gas licence holders of their licence conditions and certain statutory obligations;

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- creating a power to impose on Northern Ireland electricity suppliers a “renewables obligation” to promote the generation and consumption of energy from renewable sources;
 - creating enabling provisions to implement the concept of “postalisation” of gas conveyance charges to facilitate the extension of the gas industry in Northern Ireland by a major gas infrastructure project. Postalisation is essential to enable this project to proceed; and
 - replacing transitional statutory provisions relating to energy payments by the Department with permanent statutory authority for the Department to make grants in the electricity and gas sectors.

OVERVIEW

5. The Order has 67 Articles and 5 Schedules. In addition to introducing a number of new provisions, it makes substantial amendments to the Electricity (Northern Ireland) Order 1992 and the Gas (Northern Ireland) Order 1996.

COMMENTARY ON THE PROVISIONS OF THE ORDER

6. **Part II – Articles 3 to 11 (New regulatory arrangements)** – establishes the Northern Ireland Authority for Energy Regulation (the “Authority”) and requires the General Consumer Council for Northern Ireland (the “Council”) to form a new energy group. The functions of the Director General of Gas for Northern Ireland and the Director General of Electricity Supply for Northern Ireland are transferred to the Authority. Certain obligations are placed on the Authority and the Council to prepare and publish forward work programmes, and to draw up a memorandum to ensure effective co-operation between the two bodies.

Part III – Articles 12 to 15 (Objectives of regulation of electricity and gas) – sets out the principal objectives and general duties of the Department and the Authority in carrying out their functions in relation to electricity and gas, and specifies certain exceptions to them.

Part IV – Articles 16 to 27 (Functions of the General Consumer Council) – sets out the main functions of the Council in relation to electricity and gas and obliges it to have regard to the interests of certain disadvantaged consumers. It gives the Council power to carry out investigations, provide and publish advice and information and sets out the Council’s rights of access to information from the Authority and energy companies. It also gives the Authority reciprocal rights of access to information from the Council.

Part V – Articles 28 to 40 (Licences) – makes a number of changes to the current licensing regime in both the electricity and gas sectors. It makes provision for more than one electricity transmission or gas conveyance licence to be granted for a particular area where the licence holders are carrying out different functions. In particular, it allows for the separation of system operation and asset ownership roles. This Part also contains provisions clarifying certain of the obligations which may be placed on electricity and gas companies through their licences and enhances the role of the Competition Commission in determining licence modifications as well as giving the Department certain powers to alter licensable activities.

Part VI – Articles 41 to 51 (Enforcement) – relates to the enforcement by the Authority of electricity and gas licence conditions, certain statutory duties of electricity and gas licence holders and the standards of performance in individual cases required of public electricity suppliers. A new power enables the Authority to impose financial penalties, of up to 10% of turnover, on licence holders in both the electricity and gas sectors for past or current contraventions of their licence conditions, of other specified statutory requirements, and, in the case of public electricity suppliers, of such standards of performance. This Part also gives the Authority powers to obtain documents and information in connection with the investigation of suspected contraventions.

Part VII – Articles 52 to 58 (Electricity from renewable sources) – provides the Department with a flexible power to impose obligations on all licensed Northern

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Ireland electricity suppliers in relation to the supply of electricity generated from renewable sources. An obligation will be based on the requirement that a proportion of the total supply of electricity to consumers in Northern Ireland must be renewable electricity. This Part also introduces the concept of “green certificates”, which are tradeable certificates issued by the Authority, evidencing the generation and supply of renewable electricity in Northern Ireland. Possession of these certificates will count towards a supplier’s obligation. This Part also abolishes the Department’s current powers in relation to non-fossil fuel obligations but provides saving powers for existing contracts entered into under them.

Part VIII – Articles 59 to 67 (Miscellaneous and supplemental) – contains a number of provisions which, among other things, include giving the Department powers to modify licences in connection with the introduction of the postalisation of gas conveyance charges and to provide grants for energy purposes.