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DRAFT STATUTORY INSTRUMENTS

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**2003 No.**

**The Energy (Northern Ireland) Order 2003**

**PART VIII**

**MISCELLANEOUS AND SUPPLEMENTARY**

*Common tariff for conveyance of gas through designated pipe-lines*

**Designation of pipe-lines for purposes of common tariff**

**59.**—(1) The Department, after consultation with the Authority, may by order designate any pipe-line as a pipe-line to which Article 60 applies; and references in that Article to a “designated pipe-line” are to a pipe-line which is designated under this Article.

(2) A pipe-line shall not be designated under this Article unless—

- (a) it is a high-pressure pipe-line; or
- (b) it is connected to a high-pressure pipe-line which is so designated.

(3) For the purposes of this Article a pipe-line is a high-pressure pipe-line if it has a design operating pressure exceeding 7 bar gauge.

(4) Before making an order under this Article, the Department shall give notice—

- (a) stating that it proposes to make the order and setting out its effect; and
- (b) 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 order may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(5) An order under this Article may provide that the order (or so much thereof as designates any particular pipe-line) shall cease to have effect on the happening of any event specified in the order.

(6) If an order under this Article contains provision to the effect that the designation by the order of any particular pipe-line is, subject to any provision made by virtue of paragraph (5), to have effect for a period specified in the order, the Department shall not—

- (a) revoke that order; or
- (b) amend that order so that the designation of that pipe-line ceases to have effect,

before the end of that period.

**Modification of gas licences: common tariff for conveyance of gas through designated pipe-lines**

**60.**—(1) The Department after consultation with the Authority, or the Authority with the consent of the Department, may in accordance with this Article modify—

- (a) the conditions of a particular licence under sub-paragraph (a) or (c) of Article 8(1) of the Gas Order; or

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

where it considers it necessary or expedient to do so for the purpose of implementing, or facilitating the operation of, arrangements designed to secure that the prices charged in connection with the conveyance of gas through designated pipe-lines are in accordance with a common tariff which does not distinguish (whether directly or indirectly) between different parts of Northern Ireland or the extent of use of any such pipe-line.

(2) The power to modify licence conditions under sub-paragraph (a) or (b) of paragraph (1) may not be exercised more than once pursuant to the designation of any pipe-line under Article 59.

(3) The power to modify licence conditions under sub-paragraph (a) or (b) of paragraph (1) includes power to make incidental, consequential or transitional modifications.

(4) Before making modifications under this Article the Department or the Authority shall consult the holder of any licence being modified and such other persons as it considers appropriate.

(5) Any modification of part of a standard condition of a licence under paragraph (1)(a) shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part II of the Gas Order.

(6) Where at any time the Department or the Authority modifies under paragraph (1)(b) the standard conditions of licences under sub-paragraph (a) or (c) of Article 8(1) of the Gas Order, it shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time.

(7) Where the Department or the Authority makes any modifications under this Article it shall publish those modifications in such manner as it considers appropriate.

### *Miscellaneous*

#### **Grants for energy purposes**

**61.**—(1) The Department may, in accordance with this Article, make grants to persons engaged in, or in commercial activities connected with—

- (a) the generation, transmission or supply of electricity;
- (b) the conveyance, storage or supply of gas; or
- (c) providing advice or undertaking research or other activities relating to any of the matters mentioned in sub-paragraph (a) or (b).

(2) A grant shall not be made under this Article unless in the opinion of the Department—

- (a) the making of the grant is likely to achieve one or more of the purposes set out in paragraph (3); and
- (b) the amount of the grant is reasonable having regard to all the circumstances.

(3) Those purposes are—

- (a) to secure a diverse and viable long term energy supply;
- (b) to promote research and development in relation to matters connected with energy supply;
- (c) in relation to grants under paragraph (1)(a) or (c), to promote efficiency and economy on the part of persons authorised by licences or exemptions to supply or participate in the transmission of electricity;
- (d) in relation to grants under paragraph (1)(b) or (c), to promote the development and maintenance of an efficient, economic and co-ordinated gas industry in Northern Ireland;

- (e) any other purpose prescribed by regulations made by the Department with the approval of the Department of Finance and Personnel.
- (4) Grants under this Article shall—
  - (a) be of such amounts; and
  - (b) be made subject to such conditions (including conditions as to repayment),as the Department may determine.

### **Reasons for decisions**

**62.**—(1) This Article applies to the following decisions of the Authority, the Department or the Secretary of State, namely—

- (a) the revocation of an electricity licence or a gas licence;
- (b) the modification of the conditions of an electricity licence or a gas licence;
- (c) the giving of any directions or consent in pursuance of a condition included in a licence by virtue of—
  - (i) Article 11(3)(a) or (b) of the Electricity Order; or
  - (ii) Article 10(3)(a) or (b) of the Gas Order;
- (d) the determination of a question referred in pursuance of a condition included in a licence by virtue of —
  - (i) Article 11(3)(c) of the Electricity Order; or
  - (ii) Article 10(3)(c) of the Gas Order;
- (e) the determination of a dispute referred under Article 26(1) of the Electricity Order;
- (f) the making of a final order (within the meaning of Part VI), the making or confirmation of a provisional order (within the meaning of that Part) or the revocation of a final order or of a provisional order which has been confirmed.

(2) As soon as reasonably practicable after making such a decision the Authority, the Department or the Secretary of State shall publish a notice stating the reasons for the decision in such manner as it or he considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be interested.

(3) The Authority shall send a copy of a notice published in respect of a decision mentioned in sub-paragraph (a), (b), (c), (d) or (f) of paragraph (1) to the licence holder to whose licence, or to whom, the decision relates.

(4) In preparing a notice under paragraph (2) the Authority, the Department or the Secretary of State shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where it or he considers that publication of that matter would or might seriously and prejudicially affect the interests of that individual or body.

(5) This Article does not apply to a decision resulting in any provision which the Department has directed the Authority not to enter in a register under—

- (a) Article 52(4) of the Electricity Order; or
- (b) Article 29(4) of the Gas Order.

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

**63.**—(1) Information which—

(a) has been obtained under or by virtue of the provisions of this Order, Part II of the Electricity Order or Part II of the Gas Order; and

(b) relates to the affairs of any individual or to any particular business,

shall not be disclosed during the lifetime of the individual or so long as the business continues to be carried on, except as provided below.

(2) Paragraph (1) does not apply to a disclosure made with the consent of the individual or the person for the time being carrying on the business.

(3) Paragraph (1) does not apply to a disclosure if—

- (a) it is made for the purpose of facilitating the performance of any functions of the Department, the Authority, the Council or the Competition Commission under the Electricity Order, the Gas Order or this Order;
- (b) it is required by a notice under Article 31 or 59 of the Electricity Order, Article 30(1) or (2) of the Gas Order or Article 51 or the information has been obtained in pursuance of a notice under Article 30(2) of the Gas Order;
- (c) it is made by a licence holder and is required to be made by a condition of his licence; or
- (d) it is made by one licence holder to another and is required by that other licence holder for purposes connected with the carrying on of activities which he is authorised by his licence to carry on.

(4) Paragraph (1) does not apply to any disclosure of information made—

- (a) for the purpose of facilitating the performance by a person or body mentioned in paragraph (5) of any function under a statutory provision specified in paragraph (6);
- (b) for the purpose of facilitating the performance by the Comptroller and Auditor General for Northern Ireland or the Health and Safety Executive for Northern Ireland of any of his or its functions;
- (c) for the purpose of facilitating the exercise by the Secretary of State of any power conferred by the Financial Services and Markets Act 2000 (c. 8) or by the statutory provisions relating to companies, insurance companies or insolvency;
- (d) for the purpose of facilitating the performance by the Department or the Department of Finance and Personnel of any functions conferred by the statutory provisions relating to companies or insolvency or for the purposes of facilitating the performance of the functions of an inspector appointed under the statutory provisions relating to companies;
- (e) for the purpose of facilitating the performance by the official receiver for Northern Ireland of his functions under the statutory provisions relating to insolvency or by a recognised professional body for the purposes of Article 350 of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#) of its functions as such a body;
- (f) for the purposes of facilitating the performance by a district council of its functions under the Consumer Protection Act 1987 (c. 43);
- (g) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;
- (h) for the purposes of any civil proceedings brought under or by virtue of the Electricity Order, the Gas Order, this Order or any statutory provision specified in paragraph (6); or
- (i) in pursuance of a Community obligation;

and sections 17 and 18 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) apply to this paragraph as if it were listed in Schedule 4 to that Act.

(5) The persons and bodies specified for the purposes of paragraph (4)(a) are—

- (a) a Minister of the Crown;

- (b) a Northern Ireland department;
  - (c) the Competition Commission;
  - (d) the Office of Fair Trading;
  - (e) the Director General of Telecommunications;
  - (f) the Director General of Water Services;
  - (g) the Gas and Electricity Markets Authority;
  - (h) the Water Appeals Commission for Northern Ireland;
  - (i) the Civil Aviation Authority;
  - (j) the Financial Services Authority.
- (6) The statutory provisions specified for the purposes of paragraph (4)(a) and (h) are—
- (a) the Trade Descriptions Act 1968 (c. 29);
  - (b) the Fair Trading Act 1973 (c. 41);
  - (c) the [Water and Sewerage Services \(Northern Ireland\) Order 1973 \(NI 2\)](#);
  - (d) the Consumer Credit Act 1974 (c. 39);
  - (e) the Estate Agents Act 1979 (c. 38);
  - (f) the Competition Act 1980 (c. 2);
  - (g) the Telecommunications Act 1984 (c. 12);
  - (h) the Airports Act 1986 (c. 31);
  - (i) the Gas Act 1986 (c. 44);
  - (j) the [Audit \(Northern Ireland\) Order 1987 \(NI 5\)](#);
  - (k) the [Consumer Protection \(Northern Ireland\) Order 1987 \(NI 20\)](#);
  - (l) the Consumer Protection Act 1987 (c. 43);
  - (m) the Control of Misleading Advertisements Regulations 1988 ([SI 1988/915](#));
  - (n) the Water Act 1989 (c. 15), the Water Industry Act 1991 (c. 56) and any of the other consolidation Acts (within the meaning of section 206 of the Water Industry Act 1991);
  - (o) the Electricity Act 1989 (c. 29);
  - (p) Part IV of the [Airports \(Northern Ireland\) Order 1994 \(NI 1\)](#);
  - (q) the [Water \(Northern Ireland\) Order 1999 \(NI 6\)](#);
  - (r) the Competition Act 1998 (c. 41);
  - (s) the Financial Services and Markets Act 2000 (c. 8);
  - (t) the Utilities Act 2000 (c. 27);
  - (u) the Enterprise Act 2002 (c. 40).
- (7) The Department may by order modify paragraph (3), (4), (5) or (6).
- (8) Nothing in paragraph (1) is to be construed either as limiting the matters which may be—
- (a) published under Article 45 of the Electricity Order or Article 7, 18, 19, 21, 25 or 27;
  - (b) made public by the Authority as part of a notice under Article 26; or
  - (c) included in, or made public as part of, a report of the Authority, the Council or the Competition Commission under any provision of this Order, Part II of the Electricity Order or Part II of the Gas Order,
- or as applying to information which has been so published or has been made public as part of such a notice or such a report.

(9) A person who discloses any information in contravention of this Article is guilty of an offence and 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.

(10) Information obtained by the Authority in the exercise of functions which are exercisable concurrently with the Office of Fair Trading under Part I of the Competition Act 1998 (c. 41) is subject to Part 9 of the Enterprise Act 2002 (information) and not to paragraphs (1) to (9) of this Article.

### **Assignment of wayleaves**

**64.**—(1) In Schedule 4 to the Electricity Order (powers of licence holders) after paragraph 10 there shall be inserted —

*“Assignment of necessary wayleave*

**10A.**—(1) Subject to the following provisions of this paragraph, a necessary wayleave granted under paragraph 10 shall be capable of being assigned if (and only if)—

- (a) in the case of a wayleave granted after the coming into operation of Article 64 of the Energy (Northern Ireland) Order 2003, a term to that effect is included in the wayleave;
  - (b) in the case of a wayleave granted before that time, it is designated by the Department on an application made by the relevant licence holder.
- (2) A necessary wayleave shall not be assigned—
- (a) without the consent of the Department; or
  - (b) to a person other than a licence holder.
- (3) The relevant licence holder shall—
- (a) give notice of an application under sub-paragraph (1)(b) to—
    - (i) the occupier of the land; and
    - (ii) where the occupier is not also the owner of the land, the owner; and
  - (b) send a copy of that notice to the Department, together with the name and address of each person to whom that notice has been given.
- (4) The notice under sub-paragraph (3) shall—
- (a) identify the wayleave and state that an application in respect of it has been made to the Department under sub-paragraph (1)(b); and
  - (b) specify a period (not being less than 28 days from the date on which the notice is given) during which representations or objections concerning the application may be made to the Department.
- (5) Before determining whether to designate a wayleave in pursuance of an application under sub-paragraph (1)(b), the Department shall consider any representations or objections which are duly made as mentioned in sub-paragraph (4)(b) and not withdrawn .
- (6) The Department shall give notice of its decision on an application under sub-paragraph (1)(b) to—
- (a) the licence holder; and
  - (b) each person mentioned in sub-paragraph (3)(b).

(7) In this paragraph—

“assign” includes transfer by any means;

“relevant licence holder”, in relation to a necessary wayleave, means the licence holder to whom the wayleave was granted or to whom it has been assigned.

(8) In paragraphs 11 and 12 references to a licence holder include references to a licence holder to whom a wayleave has been assigned.”.

(2) In Schedule 3 to the Gas Order (powers of licence holders) after paragraph 10 there shall be inserted—

*“Assignment of necessary wayleave*

**10A.**—(1) Subject to the following provisions of this paragraph, a necessary wayleave granted under paragraph 10 shall be capable of being assigned if (and only if)—

(a) in the case of a wayleave granted after the coming into operation of Article 64 of the Energy (Northern Ireland) Order 2003, a term to that effect is included in the wayleave;

(b) in the case of a wayleave granted before that time, it is designated by the Department on an application made by the relevant licence holder.

(2) A necessary wayleave shall not be assigned—

(a) without the consent of the Department; or

(b) to a person other than a licence holder.

(3) The relevant licence holder shall—

(a) give notice of an application under sub-paragraph (1)(b) to—

(i) the occupier of the land; and

(ii) where the occupier is not also the owner of the land, the owner; and

(b) send a copy of that notice to the Department, together with the name and address of each person to whom that notice has been given.

(4) The notice under sub-paragraph (3) shall—

(a) identify the wayleave and state that an application in respect of it has been made to the Department under sub-paragraph (1)(b); and

(b) specify a period (not being less than 28 days from the date on which the notice is given) during which representations or objections concerning the application may be made to the Department.

(5) Before determining whether to designate a wayleave in pursuance of an application under sub-paragraph (1)(b), the Department shall consider any representations or objections which are duly made as mentioned in sub-paragraph (4)(b) and not withdrawn.

(6) The Department shall give notice of its decision on an application under sub-paragraph (1)(b) to—

(a) the relevant licence holder; and

(b) each person mentioned in sub-paragraph (3)(b).

(7) In this paragraph—

“assign” includes transfer by any means;

“relevant licence holder”, in relation to a necessary wayleave, means the licence holder to whom the wayleave was granted or to whom it has been assigned.

(8) In paragraphs 11 and 12 references to a licence holder include references to a licence holder to whom a wayleave has been assigned.”.

### *Supplementary*

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

**65.** Schedule 3 (amendments), Schedule 4 (transitional and transitory provisions and savings) and Schedule 5 (repeals) have effect.

#### **Regulations, orders and directions**

**66.**—(1) Regulations under this Order and orders under Article 57, 59(1) or 63(7) shall be subject to negative resolution.

(2) No order shall be made under Article 39, 40, 45(9), 52(1) or 56(1) unless a draft of the order has been laid before and approved by resolution of the Assembly.

(3) Regulations and orders made by the Department under this Order may contain such incidental, supplementary or transitional provisions and such savings as appear to the Department to be necessary or expedient.

(4) Article 64 of the Electricity Order (powers to make regulations) applies to regulations under this Order as if they were made under Part II of that Order.

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

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

#### **Power to make transitional, consequential and saving provisions**

**67.**—(1) The Department may by regulations make such transitional and consequential provisions and such savings as it considers necessary or expedient in preparation for, or in connection with, or in consequence of—

(a) the coming into operation of any provision of this Order; or

(b) the operation of any statutory provision repealed or amended by a provision of this Order during any period when the repeal or amendment is not wholly in operation.

(2) Such regulations may make modifications of any statutory provision (including a provision in this Order).