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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.**—(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.