

GAS (SUPPLIER OF LAST RESORT) REGULATIONS (NORTHERN IRELAND) 2009

EXPLANATORY MEMORANDUM

INTRODUCTION

1. The Gas (Supplier of Last Resort) Regulations (Northern Ireland) 2009 (“the Regulations”) were made on 14 December 2009 under section 2(2) of the European Communities Act 1972 and come into force on 29 January 2010.
2. This Explanatory Memorandum has been prepared by the Department of Enterprise, Trade and Investment (“the Department”) in order to assist the reader in understanding the Regulations. It does not form part of the Regulations.

BACKGROUND AND POLICY OBJECTIVES

3. The Regulations amend the Gas (Northern Ireland) Order 1996 (“the 1996 Order”) to conform with Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas (“the Directive”).
4. The aim of the Directive is to contribute to the creation of a fully competitive, liberalised market in gas in the EU, consistent with the EU’s wider energy liberalisation package, and it provides a number of elements intended to open the market to competition. Directive 98/30/EC, which was repealed by the Directive, provided only for partial liberalisation of the gas markets.
5. The Directive was published on 26 June 2003 and entered into force 20 days after publication in the Official Journal on 15 July 2003. It requires Member States to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive not later than 1 July 2004. The text of the Directive can be accessed at:
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:176:0057:0078:EN:PDF>
6. The Department transposed the requirements of the Directive in the Gas Order 1996 (Amendment) Regulations (Northern Ireland) 2006. Therefore, Northern Ireland is compliant with the requirements of the Directive.
7. The Directive contains a provision in Article 3(3), Public Service Obligations and Customer Protection, whereby Member States may appoint a supplier of last resort for customers connected to the gas network.

*This Explanatory Memorandum refers to the Gas (Supplier of Last Resort) Regulations
(Northern Ireland) 2009*

8. While the Directive does not require Member States to specifically appoint a supplier of last resort, the Regulations address the need to appoint a Supplier of Last Resort to ensure continuity of supply to customers in the event of the failure of their gas supply company.

CONSULTATION

9. In January 2009, the Department published a consultation paper (“the Consultation Paper”) seeking views and comments on the proposed implementation of Supplier of Last Resort in Northern Ireland, requesting that these be sent to the Department on or before 1 April 2009. The Consultation Paper, and its annexes, which included a draft set of Regulations, can be accessed at:

http://www.detini.gov.uk/consultation_on_draft_gas_supplier_of_last_resort_regulations_northern_ireland_2009_january_2009.pdf

10. The Department has since published responses to the Consultation Paper on its website, which can be accessed at:

http://www.detini.gov.uk/response_to_consultation_comments_on_solr.pdf

OPTIONS CONSIDERED

11. In the Consultation Paper, the Department considered the following possible options for the implementation of the Directive (extracted from the Department’s draft regulatory impact assessment, published at Annex B of the Consultation Paper):

- (1) **Option 1 – Do Nothing.** Under EC Directive 2003/55/EC Member States are not required to implement Article 3(3) regarding Supplier of Last Resort, it is not mandatory; therefore doing nothing is a possible option in this case. However, if Northern Ireland does not implement Supplier of Last Resort legislation then it would mean that all consumers would be at severe risk of being disconnected and left without a supply in the event of the “company failure” of their gas supplier. This would result in large numbers of industrial, commercial and domestic consumers across Northern Ireland being left without a source of fuel for their production processes, heating or food preparation. This option was accordingly not carried forward.
- (2) **Option 2 – Introduce Regulations.** Support and adopt Article 3(3) of the EU Directive which would introduce the provision for a Supplier of Last Resort to all customers and thus guarantee secure gas supplies in the result of market failure. As the Department and the Northern Ireland Authority for Utility Regulation (NIAUR) have a statutory obligation to protect the interests of gas consumers it is proposed to amend Northern Ireland legislation to include a provision to appoint an alternative supplier to ensure continuity of supply to customers let down by failed suppliers and to appoint NIAUR as the authority to control Supplier of Last Resort issues. Having assessed the costs and benefits of each of the options, the Department concluded that option 2 (Introduce Regulations) was its recommended solution.

FINANCIAL EFFECTS OF THE ORDER

12. The cost estimates of compliance with the Directive, and implementation of the Regulations, are highlighted in the Department's draft regulatory impact assessment, published at Annex B of the Consultation Paper.

EUROPEAN CONVENTION ON HUMAN RIGHTS

13. The Department considers that the provisions of the Regulations are compatible with the European Convention on Human Rights.

EQUALITY IMPACT ASSESSMENT

14. The Department has concluded that the Regulations should not be subject to a full Equality Impact Assessment. Having conducted an initial legislative screening (attached at **Annex A**), the Department considers that the Regulations will ultimately ensure that the rights of all Northern Ireland gas consumers are protected.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

15. The Department published its draft regulatory impact assessment (attached at **Annex B**) together with the Consultation Paper. The Department's views as regards implementation of the Directive in Northern Ireland have not changed since the publication of the draft regulatory impact assessment and, consequently, the Department has adopted the regulatory impact assessment in the form of the published draft.
16. The regulatory impact assessment considers the background to, and objective of, the Directive and sets out the various possible options (outlined at paragraph 12 above) for implementing the Directive in Northern Ireland. The Department concluded that the most appropriate option was to introduce the Regulations.

MAIN ELEMENTS OF THE REGULATIONS

17. In summary, the Regulations:
 - insert a new Article 24A into the 1996 Order which gives the Authority the power to appoint a Supplier of Last Resort to supply gas to customers in the circumstances where their gas supplier (the defaulting supplier) has its supply licence revoked and can no longer supply to them.

COMMENTARY ON ARTICLES

18. Regulation 2 inserts a new Article 24A into the 1996 Order, granting the Authority the power to appoint a Supplier of Last Resort to supply gas to customers in the circumstances where their gas supplier has its supply licence revoked and can no longer supply to them, thus providing for a high level of protection for the interests of consumers of gas.

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(Northern Ireland) 2009*

19. The Department compiled complete transposition notes when the requirements of the Directive were transposed in the Gas Order 1996 (Amendment) Regulations (Northern Ireland) 2006. Therefore, it has been deemed unnecessary to replicate the transposition notes for the Directive.

COMMENCEMENT

20. The Regulations shall come into force on 29 January 2010.

**Energy Division
Department of Enterprise, Trade and Investment**

DETI POLICY & LEGISLATION SCREENING FORM

Section 1

(A) The Legal Background

Under section 75 of the Northern Ireland Act 1998, the Department is required to have due regard to the need to promote equality of opportunity:

- between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- between men and women generally;
- between persons with a disability and persons without; and
- between persons with dependants and persons without.

Without prejudice to the obligations set out above, the Department is also required, in carrying out its functions relating to Northern Ireland, to have regard to the desirability of promoting good relations between persons of different religious beliefs, political opinion or racial group.

- 1.1 This form is intended to assist you in your consideration of the new policy or legislation in question to record the outcome in respect of these statutory equality considerations. We have a legal obligation to maintain an accurate audit trail of equality considerations.
- 1.2 The screening procedure should result in:
- (a) the policy/legislation being screened does not have any or a significant impact on equality of opportunity; or
 - (b) the policy/legislation being screened has (or is likely to have) a significant impact on equality of opportunity. Policies falling into this category will need to be considered further and may need an Equality Impact Assessment.
- 1.3 **EQUALITY UNIT IS HAPPY TO ADVISE ON ANY ASPECT OF SECTION 75 AND OR THE SPECIFIC ISSUES RAISED IN THIS FORM AND ITS COMPLETION. THE FORM SHOULD BE SIGNED OFF BY YOUR GRADE 5 AS EQUALITY AND DIVERSITY STEERING GROUP MEMBER.**

Section 2 – Policy/Legislation to be Screened

(B) What do we mean by “policy”?

There is no specific guidance as to how the term “policy” should be defined beyond reference to the New Oxford English Dictionary definition: *a course or principle of action adopted or proposed by a government*. A balance needs to be struck on the one hand avoiding too great a level of abstraction and, on the other, consideration of micro-level policies. Both extremes will be likely to cause difficulties.

We would certainly expect individual schemes, programmes or initiatives to be considered as elements of a policy.

Legislation can be either primary or sub-ordinate and the OFMDFM guidance procedures indicate the need to have completed equality considerations at certain stages in the procedures.

2.1 Title of policy/legislation to be screened:

Gas (Supplier of Last Resort) Regulations (Northern Ireland) 2009

2.2 Brief description of policy/legislation to be screened:

Regulations, made under section 2(2) of the European Communities Act 1972 to implement Article 3(3) of Directive 2003/55/EC concerning common rules for the internal market in gas

2.3 Aims/objectives of policy/legislation to be screened:

To transpose certain provisions of Directive 2003/55/EC which sets common rules for the internal market in gas and, in particular:

- To include provisions to appoint an alternative supplier to ensure continuity of supply to customers affected by failed suppliers, and appoint the Northern Ireland Authority for Utility Regulation (NIAUR) as the power to control supplier of last resort issues
- To provide that where a supplier supplies gas to premises or a consumer otherwise than in pursuance of a contract, the supplier shall be deemed to have contracted with the consumer for the supply of gas from the time when he began to supply that gas

It is essential that all the aims/objectives of the policy be clearly and fully defined.

2.4 On whom will the policy/legislation impact?

The immediate impact of the legislation will be mainly on gas licence holders and gas suppliers. NIAUR is developing the necessary licence modifications to complement these Regulations.

The legislation, as part of the move to a fully competitive gas market, will ultimately bring benefits to all gas consumers in terms of price, efficiency, choice and service levels

2.5 Who is responsible for (a) devising and (b) delivering the policy eg is it DETI, DTI or another Whitehall Department or EU? What is the relationship and have they considered this issue and any equality issues?

DETI is responsible for making the Regulations under section 2(2) of the European Communities Act 1972 in order to implement Article 3(3) of Directive 2003/55/EC. The Directive acknowledges vulnerable consumers, and specifically the importance of ensuring the rights of gas consumers are protected.

2.6 What linkages are there to other NI Departments/NDPBs in relation to this policy/legislation?

DETI is liaising with NIAUR, who is responsible for preparing the licence modifications for the transposition of the Directive

2.7 What data are available to facilitate the screening of this policy/legislation?

The development of the gas industry in the Greater Belfast area over the past few years has provided energy consumers with a wider choice of fuel. Gas is widely available in Belfast and at present Phoenix Natural Gas has approximately 116,000 customers, including a large number in the public housing sector within their licenced area of Greater Belfast and Larne. Firmus Energy has around 3-4,000 customers within their licence area encompassing 10 towns outside Belfast. The Department also acknowledges the statistics and information on fuel poverty in Northern Ireland which show that the problem affects a third of households here, a larger proportion than any other region in the UK.

See Appendix IV of Equality Commission Practical Guidance on EqIA or speak to DETI Statistics Research Branch, (Martin Monaghan ext 29421) or Equality and Diversity Unit (Irene McAllister, ext 29650, Stephen Shooter ext 29644).

Section 3 – Screening Analysis

You should not think of the “not known” column as the easy option to respond to any of the questions. In cases where there is no available evidence, you will need to take a pragmatic, common sense judgement as to whether the policy/legislation you are screening may have a particular/differential impact on any of the groups. Discussions with Equality and Diversity Unit, Statistics Research Branch and organisations representing the Section 75 Groups will be important and helpful at this stage.

3.1 Is there any evidence of higher or lower participation or uptake by the following characteristics?

	Yes	No	Not Known
Religious belief		✓	
Political opinion		✓	
Racial group		✓	
Age		✓	
Marital status		✓	
Sexual orientation		✓	
Sex		✓	
Disability		✓	
Dependency		✓	

Please elaborate

- All gas consumers will have choice of supplier
- All gas companies will have to conform to the Regulations

3.2 Is there evidence that any of the following groups have different needs, experiences, issues and priorities in relation to this policy issue?

	Yes	No	Not Known
Religious belief		✓	
Political opinion		✓	
Racial group		✓	
Age		✓	
Marital status		✓	
Sexual orientation		✓	
Sex		✓	
Disability		✓	
Dependency		✓	

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Please elaborate

The transposition of these specific aspects of the Directive should bring benefits to all gas consumers. The need to protect vulnerable consumers particularly those who are disabled or chronically sick, disabled, individuals of pensionable age and individuals on low incomes has been recognised in both the Directive and in the existing duties of both DETI and NIAUR under the Energy (Northern Ireland) Order 2003.

However, the issues addressed in these Regulations relate mainly to the gas market structure in Northern Ireland and are therefore largely technical in nature and, as such, it is felt that the Regulations themselves will not have any differential impact on any of the equality groups.

3.3 Have consultations with relevant groups, organisations or individuals indicated that policies of this type create problems specific to them?

	Yes	No
Religious belief		N/A
Political opinion		N/A
Racial group		N/A
Age		N/A
Marital status		N/A
Sexual orientation		N/A
Sex		N/A
Disability		N/A
Dependants		N/A

Please elaborate

See comment at 3.2 above

3.4 Is there an opportunity to better promote equality of opportunity or community relations by altering the policy, or by working with others, in Government, or in the larger community in the context of this policy?

Yes **No**

Please elaborate:

The purpose of these Regulations is to transpose aspects of Directive 2003/53/EC. The Department does not have legislative authority to go beyond the requirements of the Directive. In any event, the Department has already ensured that the needs of vulnerable consumers in relation to gas issues are reflected in the principal objective and general duties of the Department and NIAER under the Energy (Northern Ireland) Order 2003.

3.5 If the answer to any of questions in 1 to 4 is yes please indicate whether you consider the policy may present a significant risk to DETI's obligation to have due regard to the need to promote equality of opportunity. You will need to consider

whether the policy/legislation could be changed, better to promote equality of opportunity and/or be subject to a full EqIA.

~~Yes~~ No

Please elaborate:

See comments at 3.2 and 3.4 above

3.6 It may be that a policy/legislation has a differential/impact on a certain group as the policy has been developed to address an existing or historical inequality or disadvantage. If this is the case, please give details below:

N/A

Section 4

EqIA Recommendation

4.1 Full EqIA procedures should be carried out on policies considered to have significant implications for equality of opportunity. In light of the above 3 sections please fill in the following grid in relation to the policy/legislation.

	Significant Impact	Moderate Impact	Low Impact
Social Need.			✓
Effect on people's daily lives.			✓
Effect on economic, social and human rights.			✓

Please elaborate:

The introduction of this legislation will have no significant implications for equality of opportunity. All groups will have the opportunity to choose their gas supplier regardless of their economic or social standing in the community and this could improve their status.

4.2 What is the scale of expenditure incurred by the policy?

The Utility Regulator will consult on the broad principles that will be employed in the implementation of the SoLR arrangements including the costs to gas suppliers and customers. It is possible that SoLR tariffs may be

higher than those being charged by the failed company therefore customers may be subject to increased costs. There may also be additional costs to the gas market as a whole as a result of the introduction of SoLR arrangements.

4.3 Do you consider that this policy/legislation should be subject to a full EqlA? Please give reasons for your considerations.

No. This legislation will apply equally to all and should bring benefit to all.

4.4 What data are required in the future to ensure effective monitoring?

Not required – these Regulations will impose legal obligations on the Department, NIAUR and the licence holders through the conditions on their licences. Any additional monitoring is unnecessary.

Section 5

Disability Duties

Under the Disability Discrimination Act 1995 (as amended by the Disability Discrimination (Northern Ireland) Order 2006), public authorities, when exercising their functions, are required to have due regard to the need:

- to promote positive attitudes towards disabled people; and
- to encourage participation by disabled people in public life.

5.1 Does this policy/legislation have any potential to contribute towards promoting positive attitudes towards disabled people or towards encouraging participation by disabled people in public life? If yes, please give brief details.

No. This legislation will apply equally to all and should bring benefit to all.

Signed: [Signed Grade 5]
EDSG Member

Division: Director of Energy Division, Department of Enterprise, Trade & Investment

Date: 24 November 2008

**GAS (SUPPLIER OF LAST RESORT) REGULATIONS (NORTHERN
IRELAND) 2008
DRAFT REGULATORY IMPACT ASSESSMENT**

1. Title of proposal

Gas (Supplier of Last Resort) Regulations (Northern Ireland) 2008

2. Introduction

This Regulatory Impact Assessment supports the implementation in Northern Ireland of the above Regulations which will introduce a provision to appoint an alternative supplier to ensure continuity of supply to gas customers if their supplier fails to meet their contractual obligations.

The Department proposes to include a provision to empower the Northern Ireland Authority for Utility Regulation (the Utility Regulator) to appoint a Supplier of Last Resort (SoLR) for the purpose of securing continuity of supply to customers connected to the gas network as specified in Article 3(3) of the European Gas Directive 2003/55/EC. This provision states Member States **may** appoint a SoLR, and while it is not mandatory, nevertheless it is considered that there are clear benefits for all gas consumers in Northern Ireland by doing so.

3. Purpose

3.1 Objective

The aim of this proposal is to identify means of implementing Regulations related to SoLR that fully complies with the EU Directive but minimises costs to consumers and businesses and allows maximum flexibility to adapt the arrangement as circumstances change. It ensures stability for security of supply for gas consumers.

3.2 Background

3.2.1 Unlike the rest of the United Kingdom, Northern Ireland because of unfavourable economics did not have access to supplies of natural gas until the 1990's. In 1992, as part of the restructuring and privatisation of the local electricity supply

industry, Ballylumford Power Station was converted from oil to gas firing. This base load requirement provided the opportunity for the development of a commercially viable downstream natural gas industry in Northern Ireland.

- 3.2.2 In September 1996 a licence was granted to Phoenix Natural Gas Ltd (PNG) for the staged development of the industrial, commercial and domestic gas markets in the Greater Belfast and Larne areas. There are currently around 120,000 Phoenix customers connected to gas.
- 3.2.3 On 21 September 2001 the Northern Ireland Executive announced its support for the development of a multi-million pound gas pipeline project. The support was in the form of a grant package up to £38m, including an Irish Government contribution of £8.5m. The project involved construction by Bord Gáis Éireann Northern Ireland (BGE (NI)), a subsidiary of the state owned Republic of Ireland gas company, of two gas transmission pipelines. A gas pipeline from Dublin to Antrim (the South-North pipeline) was completed in October 2006 providing natural gas to Newry, Armagh, Banbridge, Craigavon, and Antrim. This pipeline links with the first pipeline in the project, from near Carrickfergus to Londonderry (the North-West pipeline) which was completed in November 2004, and which supplies gas to Coolkeeragh power station and to Ballymena, Ballymoney, Coleraine, Limavady and Londonderry.
- 3.2.4 Firmus Energy are continuing with the roll-out of the natural gas distribution networks in areas served by both pipelines and have around 4,000 customers connected.
- 3.2.5 The Bord Gáis/Firmus licence is different from that granted to Phoenix Natural Gas in Belfast in that gas will only be provided in the Firmus licence area where there is an economic case for doing so; hence not all potential customers will be provided with a gas supply.
- 3.2.6 Following Ministerial announcement on 30 January 2006 of full gas supply market opening in the Phoenix licence area of Greater Belfast and Larne from 1 January 2007, a Gas Market Opening Group (GMOG) was established. The purpose of the group was to identify issues which need to be addressed in order to ensure the smooth introduction of competition in the supply of natural gas within the PNG licensed area, and to

identify other significant matters which the industry regard as important to resolve. At a GMOG meeting the Department, the Utility Regulator and the gas companies all accepted the appointment of a Supplier of Last Resort as an issue requiring action and the introduction of legislation.

4. Intended Effect

- 4.1 Under the Article 3(3) of the European Gas Directive 2003/55/EC the term “supplier of last resort” is taken to mean the need to appoint a natural gas supplier to ensure continuity of supply to customers in the event of the failure of their individual gas supply company.
- 4.2 From time to time, companies in competitive markets fail. However company failure in gas and electricity sectors is more significant than company failure in other sectors of the economy because these services are generally regarded as essential. In addition it would be harmful to the overall development of the industry if supplier failure resulted in customers being permanently disconnected and left without access to a supply of gas.
- 4.3 All Northern Ireland gas licences contain a provision whereby the Department or the Utility Regulator can revoke a licence if the licence holder becomes insolvent. However Northern Ireland legislation does not currently include a provision to appoint an alternative supplier to ensure continuity of supply to customers let down by failed suppliers.
- 4.4 The principal aim of the Regulations will be to introduce provisions to appoint an alternative supplier to ensure continuity of supply to customers affected by failed suppliers, and appoint the Utility Regulator as the power to control Supplier of Last Resort issues.
- 4.5 The impact of the legislation will be on gas licence holders and gas suppliers. The Utility Regulator will consider licence modifications if these are deemed necessary. The legislation will ultimately bring benefits to all gas consumers in terms of security of supply and service levels.

5. Risk Assessment

The key risk addressed by these Gas Regulations is the security of supply risk to consumers connected to the gas network in the event of the “company failure” of their gas supplier.

5.1 Options

- **Option 1 – do nothing.**

Under EC Directive 2003/55/EC Member States are not required to implement Article 3(3) regarding SoLR, so it is not mandatory: Therefore doing nothing is a possible option in this case. However, if Northern Ireland does not implement SoLR legislation then it would mean that all consumers could be at risk of being disconnected and left without a supply in the event of the “company failure” of their gas supplier. This could result in large numbers of industrial, commercial and domestic consumers across Northern Ireland being left without a source of fuel for their production processes, heating or food preparation. This option is therefore not being put forward.

- **Option 2 – introduce Regulations.**

The second option is to support and adopt Article 3(3) of the EU Directive which would introduce the provision for a Supplier of Last Resort for all customers and thus guarantee secure gas supplies in the result of market failure. As DETI and the NIAUR have a statutory obligation to protect the interests of gas consumers it is proposed to amend Northern Ireland legislation to include a provision to appoint an alternative supplier to ensure continuity of supply to customers let down by failed suppliers and to appoint NIAUR as the authority to control SoLR issues.

6. Cost Benefit Analysis

6.1 Benefits

- 6.1.1 The introduction of the Supplier of Last Resort Regulations (SoLR) will bring benefits to all gas consumers in Northern Ireland by ensuring that their rights to a gas supply are protected. The customers of the company which has ceased to supply gas may benefit from a lower tariff when transferred to the SoLR, if their original supplier had been charging a higher

tariff than the company taking on the role of SoLR. This impact could alternatively have the opposite affect and result in a higher tariff for the customer.

- 6.1.2 Those gas supply companies who remain financially sound could benefit from an increase in their market share if SoLR arrangements are put in place when one of their competitors goes out of business. Following the failure of one of the gas supply companies the appointed SoLR will benefit from obtaining additional customers without incurring the costs normally associated with increasing market share such as for sales and marketing.
- 6.1.3 The SoLR arrangements will enable DETI and the Utility Regulator to fulfil their duties under the Energy (Northern Ireland) Order 2003. These duties include the need to protect vulnerable consumers particularly those who are chronically sick, disabled, individuals of pensionable age and individuals on low incomes. The SoLR arrangements will ensure that all gas customers in Northern Ireland will experience a continuation of gas supply irrespective of how their gas supply company performs.

6.2 Costs

- 6.2.1 It is possible that SoLR tariffs may be higher than those being charged by the failed company, therefore customers may be subject to increased costs. In addition, the arrangements concerning Pay As You Go (PAYG) customers will also have to be considered. Arrangements will be put in place to ensure that any credits on a PAYG customer's prepayment card can be transferred to the SoLR's PAYG system otherwise the customer will incur the cost of losing any amount credited to their original PAYG card. If the up front costs of the implementation of SoLR arrangements are passed through in the SoLR tariff then this will be an additional cost to the failed supplier's gas customers and also to the existing customers of the SoLR.
- 6.2.2 There may also be additional costs to the gas market as a whole as a result of the introduction of SoLR arrangements. The SoLR may incur additional administrative costs in setting up new accounts for the failed companies' customers and will also have to incur any costs associated with maintaining a gas supply to an increased number of gas customers. If the systems of the failed gas supplier and the SoLR are not

compatible then there will be a cost associated with providing a solution to align the two systems.

If any up front costs of the implementation of SoLR arrangements are passed through in an ex post transmission tariff, as determined by the Utility Regulator, this would be an additional cost to the gas suppliers in Northern Ireland.

6.2.3 An issue for consideration is to what extent the SoLR would be compensated for any costs incurred in providing gas supply to the customers of the failed supplier. Options for consideration include a Public Service Obligation (PSO) to cover the up front costs of the implementation of SoLR arrangements. This amount could be determined annually by the Utility Regulator. If the SoLR were to be triggered any additional costs incurred could be passed through in the SoLR tariff or via an ex post transmission tariff, as determined by the Utility Regulator.

6.2.4 The conditions in the gas market and the wider economy at the time will influence which funding option is implemented when the SoLR is required. As previously discussed, consideration will also have to be given to the ex ante arrangements required for system processes and there will have to be put in place a solution to overcome any compatibility issues between the systems of the failed gas supplier and the SoLR.

6.2.5 It is evident that there are a range of benefits and costs associated with the implementation of the SoLR arrangements. It is anticipated that the presence of a SoLR will bring an overall benefit to consumers through security of supply and this will outweigh any costs such as a possible tariff increase.

6.2.6 From the perspective of the gas industry the company appointed as SoLR would benefit in gaining customers but would have to have arrangements to accommodate the new customer registration process. The SoLR arrangements will allow DETI and NIAUR to fulfil their duties under the Energy (Northern Ireland) Order 2003 especially to vulnerable customers.

7. Concentration of Small Business: The Small Business Impact Test

Provision for SoLR will provide the beneficial effect of ensuring continuity of security of supply of gas to all gas consumers including small

businesses. The introduction of these regulations will also ensure that businesses can continue to be competitive and not have to be concerned for their ongoing gas supplies.

8. Environmental Impact

8.1 Natural Gas

Natural gas is the cleanest fossil fuel therefore the continued use of gas by customers is seen as necessary rather than switching to a more polluting alternative such as oil.

9. Enforcement and Sanctions

Compliance with gas licence conditions is enforced by the Utility Regulator who has the power to impose financial penalties of up to 10% of the turnover of the licensees in the event of a breach.

10. Monitoring and Review

The Department will liaise with the Utility Regulator who will monitor the operation of the Supplier of Last Resort regulations within the Northern Ireland gas market to assess if this is delivering the anticipated benefits. The Department would intend to carry out a review of the Regulatory Impact Assessment by 2015.

11. Consultation

This Regulatory impact Assessment forms part of the Departments consultation on the implementation of Regulations on Supplier of Last Resort.

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

[Signed]

Minister for Enterprise, Trade and Investment

10 December 2008