

Explanatory Memorandum to

The Electricity and Gas (Billing) (No.2) Regulations (Northern Ireland) 2010

2010 No. 27

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department of Enterprise, Trade and Investment to accompany SR (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under section 2 (2) of the European Communities Act 1972 and is subject to the negative resolution procedure. The rule is due to come into operation on 8 March 2010.

2. Purpose

- 2.1 These Regulations will revoke and replace Statutory Rule 2009 No. 215, the Electricity and Gas (Billing) Regulations (Northern Ireland) 2009 and will correct a number of errors in them. They will require suppliers of electricity and gas in Northern Ireland to provide domestic consumers with historical consumption information on their bills or statements of accounts. The information required is a comparison of customer's energy or gas consumption covered by the period of the bill or statement with that for the corresponding period in the previous year. In addition these regulations also give effect to Article 13 Regulation EC No. 1775/2005 by adding the Regulation to the definition of 'relevant requirements' under the financial penalty power contained within Article 45 (1) and Article 45 (11) of The Energy (Northern Ireland) Order 2003.

3. Background

- 3.1 These Regulations implement Article 13 3 (b) of the EC Directive 2006/32/EC on Energy End Use Efficiency and Energy Services Directive (ESD). This requires member states to ensure that, where appropriate, comparative information is made available on or with bills showing the customer's consumption for the same period in the previous year, preferably in graphical form.
- 3.2 The Regulations follow closely the Electricity and Gas Billing Regulations 2008 which implement Article 13 3 (b) of the Directive in Great Britain. The NI regulations differ from the GB Regulations in that they amend Article 41(2) of the Energy (Northern Ireland) Order 2003, whereas the rules of the GB Regulations are inserted into supply licences.

- 3.3 The Regulations also give effect to Article 13 (2) of Regulation EC No. 1775/2005 which aims to set non-discriminatory rules for access conditions to natural gas transmission systems taking into account the specificities of national and regional markets with a view to ensuring the proper functioning of the internal gas market. In particular Article 13 requires that member states both establish provisions to penalise infringements of the Regulation and 'take all necessary measures to ensure that the penalties are implemented'.
- 3.4 The EU Energy End-use Efficiency and Energy Services Directive (ESD), agreed in December 2005, requires Member States to develop national action plans for achieving a 1% target for saving energy from end-users (that is, final customers). The Directive also contains a series of provisions designed to improve energy efficiency. Within Article 13 of the Directive there is a specific requirement for member States to ensure that, where appropriate, energy suppliers make available on bills comparative historic information.
- 3.5 The Energy White Paper (May 2007) set out the Government's proposal for suppliers to provide customers with historic information, preferably in graphical form, comparing energy use in one period with the same period in the previous year. This addressed the ESD requirement for the provision of such data, but was also intended to wider carbon emissions reduction targets across the UK.
- 3.6 This requirement does not cover business customers, as it is recognised that business customers' circumstances, needs and requirements differ from those of domestic customers. There is a growing market in energy services to business customers, and DETI envisages the provision of other measures that would incentivise carbon-saving in this sector. To date there is no evidence to suggest that provision of comparative historical information of this kind required by this Statutory Instrument would be likely to induce behavioural change in the business sector.
- 3.7 This requirement will come into force on 22 March 2010. DETI wish to introduce this measure as soon as possible to maximise the potential for reduction in carbon emissions and to ensure full timely compliance with the Energy End Use Efficiency and Energy Services Directive.

4. Consultation

- 4.1. A consultation was carried out on the proposed Regulations under Article 13(3) (b) of the Energy End Use Efficiency and Energy Services Directive and Article 13 of Regulation EC No 1775/2005 by DETI between 7 April and 19th May 2009.

- 4.2 DETI received thirteen responses to this consultation. The responses largely fell into the category of agreeing to the approach on electricity and gas billing being proposed by DETI. Of the thirteen responses, two made no specific comments in relation to the proposed billing regulations. However there was broad support from the majority of the remaining respondents to the proposal, provided that flexibility was allowed in its provision, for instance, in terms of whether the information was provided graphically or not.
- 4.3 Two respondents commented that in their view the regulations were inequitable as they did not apply to the oil industry and therefore had concerns around the competitive position of natural gas suppliers versus oil suppliers. The Regulations do present potential for possible cost implications for all energy suppliers but the Department is of the view that given the intention to implement the minimal requirements under the Regulations and allow energy suppliers an innovative approach as to how they present the information that this approach should deliver the most cost effective outcome. However one of these respondents did recognise that the Department is seeking to improve the information that is provided to customers and is supportive of the Departments' approach to allow suppliers flexibility in how information is presented.
- 4.4 Small fuel suppliers are essentially exempt from the Directive. The Department maintains the view that, given the nature of the market for fuels other than natural gas and electricity, and the use of these fuels that it would not be practicable or in some cases possible, for suppliers to provide comprehensive and accurate information in relation to historical use.
- 4.5 Following consideration of the consultation responses, the Department has decided to implement the proposal. The requirement will be to provide historic information, which compares energy usage in one billing period with the same period the previous year, on all domestic customers' energy bills or statements, or electronically for those customers with internet based access to their accounts.
- 4.6 In the consultation document, the Department stated a preference for the information to be provided in graphical form. It said however, that it would not make this a requirement, as it recognised that energy suppliers should be allowed the flexibility to innovate and differentiate their offers in these areas. The Department also said that the data provided might cover total energy used over the comparative period or be average data that is, a simple comparison of total energy use between two or more periods or a comparison using average daily, weekly use etc.). The Department has not

changed its position on either of these matters as a result of the consultation.

- 4.7 The requirement does not cover business customers, as the Department recognises that business customers' circumstances, needs and requirements differ from those of domestic customers. There is a growing market in energy services to business customers, and the Department envisages the provision of other measures that would incentivise carbon-saving in this sector. However, it has seen no evidence that provision of comparative historical information of the kind required by this Statutory Rule would be likely to induce behavioural change in the business sector.
- 4.8 There were no comments from any respondents in relation to the proposal to give effect to Article 13 (2) of Regulation EC No. 1775/2005 which aims to set non-discriminatory rules for access conditions to natural gas transmission systems taking into account the specificities of national and regional markets with a view to ensuring the proper functioning of the internal gas market.

5. Equality Impact

- 5.1 The Regulations have been screened for section 75 equality impacts and has not been found to produce any differential impact.

6. Regulatory Impact

- 6.1. The impact assessment for the Energy Billing and Metering Regulations is attached to this memorandum at Annex A. This was update following the consultation.
- 6.2 There is no impact on the public sector as this Statutory Rule applies only to private sector business.
- 6.3 If Northern Ireland does not properly implement the Directive then the United Kingdom is left open to infraction proceedings, the result of which would be a proportionate financial fine. The option not to implement is not carried forward. The second option of implementing Article 13(3) (b) would mean Northern Ireland would be compliant with EC law. Regulations would be introduced to require that gas and electricity suppliers should provide information, in graphical form, about a customer's gas and electricity use in a comparable period from the previous year. Similarly, the option to support and adopt Article 13 of Regulation EC No.1775/05 in its current form would mean that Northern Ireland would be in line with EU Regulations and would establish provisions to penalise infringements of the Regulation. This would allow NIAUR to take all necessary measures to ensure that the penalties are implemented

6.4 In considering policy and the legislation in GB, it was concluded that Northern Ireland should make its own regulations, but that there was no specific policy reasons why the regulations should differ materially from those made for Great Britain. It was also considered that there was merit in following the GB model for consistency's sake and so that there should be no source of confusion for industry.

7. Financial Implications

7.1 The necessary changes to the electricity and gas billing will require modifications to electricity and gas suppliers billing systems that will incur additional costs. The Department is content to allow suppliers a flexible approach in meeting these regulations that will allow suppliers to deliver the best outcome by the most cost effective means. One gas supplier has indicated that it will incur significant costs to make the required changes, however the Northern Ireland Authority for Utility Regulation (NIAUR) has confirmed that the price control determination does include an allowance for billing and it is up to the company as to how they best use that allowance. NIAUR is of the view that given the intention of the Department to implement minimal requirements under the Regulations that there will be no need to revisit the price control.

7.2 The introduction of non discriminatory rules for access to gas networks is an enforcement role. There are no financial implications for DETI.

8. Section 24 of the Northern Ireland Act 1998

8.1 These Regulations do not contravene section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1 A transposition note is available at Annex B. The proposed legislation does the minimum necessary to comply with the Directive and to avoid infraction proceedings – no “Gold Plating” was considered necessary.

10. Position in Great Britain

10.1 The equivalent GB regulations were inserted as rules into supply licences and came into force on 1 January 2009. Since the coming into operation of the GB regulations all domestic suppliers will now be compliant. At least one supplier was complaint before the 1 January in any case.

11. European Convention on Human Rights

11.1. Not applicable. The instrument is subject to negative resolution procedure and does not amend primary legislation, therefore no statement is required.

12. Matters of special interest to the Enterprise, Trade and Investment Committee

12.1 The objective of the Electricity and Gas (Billing) (No. 2) Regulations (Northern Ireland) is to provide consumers with timely and accurate information to allow them to make more informed choices about their energy use and cost. It is hoped that the provision of better billing information will empower consumers to act more quickly to reduce energy usage and therefore achieve energy cost savings.

DEPARTMENT OF ENTERPRISE, TRADE AND INVESTMENT

