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Assembly

## Research and Library Service Bill Paper

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# Energy Bill (Northern Ireland) 2010

**NIAR 308-10**

This Bill Paper provides an overview and discussion of the Energy Bill  
(Northern Ireland) 2010.

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## Key Points

The following paper provides an overview and discussion of the Energy Bill (Northern Ireland) 2010.

The Bill, if passed, will introduce seven reforms:

- enhanced powers of access for gas companies in a situation where there is a suspicion of meter tampering;
- the introduction of a new offence of damaging a gas plant;
- the introduction of guaranteed performance standards for the gas industry;
- new powers for the Utility Regulator (the Regulator) to delegate gas metering and testing functions;
- provisions to allow for the establishment of deemed contract provisions between natural gas companies and customers;
- the introduction of special administration regime for gas and electricity industries; and
- provide an update of gas storage provisions.

These proposals have proven to be broadly uncontroversial and, for the most part, mirror existing legislation in the rest of the UK.



## Executive Summary

### Enhanced powers of entry

Current provisions (Gas Order (Northern Ireland) 1996) provide the Relevant Authority with powers of entry where there is a reasonable suspicion of danger to life or property.

The Energy Bill (Northern Ireland) 2010 extends these powers of entry to occasions when there has been intentional or culpable damage to a gas plant. Such powers may only be exercised at '*reasonable times*' and with the consent of the owner or occupier. If such consent is not granted entry may occur if a warrant is obtained from a Justice of the Peace. To secure a warrant, a Justice of Peace must be satisfied that '*admission to the premises is **reasonably** required for the purpose specified in the complaint*', placing a burden of proof upon the gas conveyor.

The proposals in the Bill mirror similar provisions contained in:

- the Electricity (Northern Ireland) Order 1992;
- the Gas Act 1995 (GB);
- the Electricity Act 1989 (GB); and
- Energy Miscellaneous Act 1995 (RoI)

Energy suppliers are supportive of these measures stating that they are '*in the interests of public safety*' and create a '*disincentive for tampering*'. Consumer groups have been cautiously supportive of the measures seeking assurance that entry powers are not abused. The Department states that the requirement to secure owner/occupier consent in the first instance, or a warrant from the Justice of the Peace if consent is not forthcoming, mitigates the potential for abuse.

Concern exists over the concept of '*reasonable cause*' which, it is thought, is not robustly defined. The Department have stated the need for '*regulations and secondary legislation that will drill down into much of the exact detail of how the regime will operate*'.

### New offence

The Bill creates a new offence – damaging a gas plant *intentionally or by culpable negligence* - upon summary conviction an individual will be liable to a fine '*not exceeding level 3 on the standard scale*' for committing this offence. Level 3 fines are set at £1,000.

The introduction of this offence reflects similar offences set out in:

- the Electricity (Northern Ireland) Order 1992;
- the Gas Act 1995 (GB);

- the Electricity Act 1989 (GB); and
- Energy Miscellaneous Act 1995 (RoI)

The creation of a new offence is not specifically addressed in the Department's summary of responses to the Energy Bill consultation process. Although, the broad support of extended powers of access on the basis that they provide a disincentive to meter tampering would imply support of this provision.

### **Guaranteed standards of performance**

The Energy Bill will *'enhance'* the consumer protection measures contained in the Gas (Northern Ireland) Order 1996 by *'introducing legislative provisions that will allow the Department and the Utility Regulator to determine standards of performance in connection with the activities of licensed of licensed gas suppliers and those who are licensed to convey gas'*. Failure to meet these standards will result in a *'duty to pay compensation'*.

The proposals will reflect similar provisions in the

- Electricity (Standards of Performance) Regulations (Northern Ireland) 1999
- Gas (Standards of Performance) Regulations 2005 (GB); and
- Bord Gáis charter.

There was disagreement between consumer groups and gas suppliers on the issue of compensation, specifically, how it was to be funded. Gas suppliers were of the opinion that they should be funded through a companies cost base. The Consumer Council expressed an opposing view: compensation payments should be sourced from a company's profits, rather than passed onto customers through the cost base. The Department have stated that the detail of guaranteed standards will be worked out with the Regulator. They have, however, expressed the view that *'any default on standards by the gas companies should be borne by the company'*.

### **Gas meter stamping and testing**

The Bill will amend the Gas (Northern Ireland) Order 1996, with respect to meter stamping and testing, removing the phrase *'who are members of the Director's staff'*, allowing the Regulator to delegate responsibility to delegate gas meter testing and functions, rather than carrying out such functions in house.

The above proposals reflect provisions in Section 17, subsections five and six of the Gas Act 1986.

The proposals have been seen as uncontroversial and broadly welcomed. Gas suppliers expressed concern that the ultimate responsibility for meter reading should remain with the Regulator. The Department have confirmed that this will be the case.

The Consumer Council voiced concern that the responsibility for metering and testing should be carried out by an independent body. The Department have stated *'only competent and impartial persons should be appointed as meter examiners'*.

### **Deemed contract provisions**

The Energy Bill will introduce 'deemed contracts' into the gas market. A deemed contract applies, for example, when a customer moves home, but has not proactively signed up to a gas contract. In such circumstances a customer will *be 'deemed to have automatically taken over the contract with the gas or electricity supplier of the previous occupant'* and will, *'by default be placed on a 'deemed tariff' with that supplier'*. Gas suppliers will be required to *'make, and from time to time revise'* a scheme which outlines the terms of their deemed contracts. These schemes should be sent to the Regulator and the Consumer Council. They must also be published.

In the UK, the terms and conditions of gas industry deemed contracts are outlined in OFGEM's Gas Suppliers Standard License Conditions.

Similar provisions are found in:

- Electricity Regulations (Northern Ireland) 2007
- The Gas Act 1995 (GB)
- The Electricity Act 1989 (as amended by schedule 4 paragraph 3 of the Utilities Act 2000) (GB); and
- Energy (Miscellaneous Provisions) Bill 2011 (RoI)

Consumer groups have supported the concept of the deemed contract. Citizens Advice have sought assurance that the *'deemed tariff will not penalise these consumers in any way and that consumers in this situation will be speedily moved to an agreed contract tariff'*. To protect against such occurrences the Bill contains provisions which *'provide the Utility Regulator with the power to make licence modifications for the purposes of the deemed contracts regime'*. This will enable the Regulator to draw up a Northern Ireland equivalent to OFGEM's Gas Suppliers Standard License Conditions, which, if it is to mirror its GB counterpart, should contain consumer protection.

### **Special administration regime for gas and electricity industries**

The Bill will introduce a special administration scheme for gas conveyance and electricity transmission and distribution companies facing *'actual or threatened insolvency'*. The provisions set out in this section of the Bill will not apply to gas supply, gas storage firms, electricity generators or suppliers. The Bill will enable gas and electricity networks to remain in place and ensure continued supply of energy to consumers in the event of a company failure. The intention of the Bill is to protect consumers by ensuring supply.

These provisions reflect those found in articles 154 to 169 of the Energy Act 2004 which extend to England, Scotland and Wales.

Consultation responses were, in general, supportive of a special administration scheme. There was a degree of uncertainty (at the consultation stage) as to whether the proposals would apply to suppliers. This has been clarified by the Department, outlined above, the special administration scheme will only apply to gas conveyance and electricity transmission and distribution companies.

The Insolvency Service raised three concerns to which the Department have responded:

- **Insolvency Service** – *What would happen to customers if major gas company simply decided to cease operations outside of any insolvency proceedings?*
  - **Department** – *‘the Department expect that the Utility Regulator would assess whether to enforcement action for breach of licence’.*
- **Insolvency Service** – *what happens if a company is in fact a transnational company with a main centre of operations in another EU State or even outside the EU, and insolvency proceeding are taken against the company in that state?*
  - **Department** – *‘if the company has its centre of main interests in a foreign jurisdiction then the insolvency law in the jurisdiction will apply’.*
- **Insolvency Service** – *‘should the government be given the right to appoint a person to run a gas or electricity undertaking in the event of the owner deciding to cease operations for any reason?’*
  - **Department** – *there is no corresponding alternative or supplemental measure of this nature in the special administration schemes for energy (in GB) or water (in NI).*

### **Gas storage**

The Bill will clarify the meaning of the word ‘store’ and to formally distinguish the operator and user of a gas storage facility, that is it confirms that only the operator of a gas storage facility will store gas for the purposes of the 1996 Gas Order.

On this provision the Department have stated:

*A regime to allow the Department and the Utility Regulator to consent to a gas storage facility in Northern Ireland exists, and the changes proposed are relatively minor and will clarify who has the legal responsibility.*

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# 1 Introduction

The Energy Bill (Northern Ireland) 2010 (the Bill) is intended to update Northern Ireland's natural gas industry, although one provision will also apply to the electricity industry. The Bill, if passed, will introduce seven reforms:

- enhanced powers of access for gas companies in a situation where there is a suspicion of meter tampering;
- the introduction of a new offence of damaging a gas plant;
- the introduction of guaranteed performance standards for the gas industry;
- new powers for the Utility Regulator (the Regulator) to delegate gas metering and testing functions;
- provisions to allow for the establishment of deemed contract provisions between natural gas companies and customers;
- the introduction of a special administration regime for gas and electricity industries; and
- provide an update of gas storage provisions.<sup>1</sup>

The purpose of this paper is to examine each of these provisions, drawing on Northern Ireland Assembly debates and responses to the Department's consultation process, with the intention of informing the Committee for Enterprise, Trade and Investments deliberations.

## 2 Enhanced powers of access

### 2.1 Energy Bill

Currently, under the provisions of the Gas Order (Northern Ireland) 1996, the 'relevant authority' (defined as the licence holder, the Department or any person authorised by the licence holder) has powers to enter a property to examine fittings or to cut off gas supply, if there is a reasonable suspicion of danger to life or property. Such powers may only be exercised upon the consent of the occupier or upon possession of a warrant to authorise entry (if the occupier refuses entry or in the case of an unoccupied premise).<sup>2</sup>

Section 14 of the Bill enables a 'gas conveyer' to 'disconnect any premises or to remove a gas meter' if authorised under section 10 of the same bill. Section 10, subsection (1) states<sup>3</sup>:

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<sup>1</sup> Northern Ireland Assembly Official Report *Energy Bill: Second stage – the Minister of Enterprise Trade and Investment* (15/06/10) <http://www.niassembly.gov.uk/record/reports2009/100615.htm>

<sup>2</sup> The Gas (Northern Ireland) Order 1996, Schedule 5, Paragraphs 1-5  
[http://www.opsi.gov.uk/si/si1996/Uksi\\_19960275\\_en\\_10.htm#sdiv5](http://www.opsi.gov.uk/si/si1996/Uksi_19960275_en_10.htm#sdiv5)

<sup>3</sup> The Energy Bill (Northern Ireland) 2010 (s14)

*A person who intentionally or by culpable negligence damages or allows to be damaged any gas plant provided by a gas conveyor shall be guilty of an offence...*<sup>4</sup>

The Bill adds:

*Where an offence has been committed under subsection (1) by the occupier of any premises (or by the owner of the premises if they are unoccupied when the offence is committed) in relation to any gas plant provided by a gas conveyor for making or maintaining a connection to the premises, the gas conveyor may disconnect the premises.*<sup>5</sup>

And:

*Where an offence has been committed under subsection (1), in relation to a gas meter provided by a gas conveyor, which is situated on any premises, by the occupier (or by the owner of the premises if they are unoccupied when the offence is committed), the gas conveyor may disconnect the premises and may remove the meter.*<sup>6</sup>

The Bill holds that the additional powers of entry may only be exercised at ‘reasonable times’. The new powers are also subject to the restrictions outlined in Schedule five, paragraphs five to eight, of the Gas (Northern Ireland) Order 1996. That is, powers of entry may only be exercised if ‘consent has been given by or on behalf of the occupier or under the authority of a warrant’. Such a warrant may be obtained provided a justice of peace is satisfied that ‘admission to the premises is **reasonably** required for the purpose specified in the complaint’. In addition the consent of the occupier must be sought and refused (or the premises unoccupied), and premises must be left secure and any damage rectified after entry. The Schedule also makes it an offence for any person to ‘intentionally’ obstruct any person exercising powers of entry.<sup>7</sup>

## 2.2 Precedent

Similar provisions already exist in the electricity industry. Schedule 6, paragraph 4 of the Electricity (Northern Ireland) Order 1992 states that if any person ‘intentionally or by culpable negligence damages’ the supplier may discontinue the supply of electricity and/or remove the meter. As is the case with the powers outlined in the Energy Bill, the Electricity order maintains that entry into premises is dependent upon receiving consent from the occupier. Similarly, if consent is not forthcoming, or the premise is unoccupied the relevant authority must secure a warrant prior to entry. For a warrant to

<sup>4</sup> *Ibid* s10

<sup>5</sup> *Ibid*

<sup>6</sup> *Ibid*

<sup>7</sup> The Gas (Northern Ireland) Order 1996 (schedule 5, paragraph 5-8)

be granted a Justice of the Peace must be satisfied that *'admission to premises is reasonably required for the purpose specified in the complaint'*.<sup>8</sup>

Similarly, in the rest of the UK the Gas Act 1995, which regulates the statutory rights of entry by or on behalf of gas operators, contains such a proviso. The act states that anyone who tampers with gas meters intentionally or through culpable negligence may have their supply disconnected (Schedule 2, Paragraph 10). The act sets the rights of entry into premises for purposes of discontinuance of supply – that is, with appropriate document of authority and providing 24 hours notice. A similar scenario exists for the removal of gas meters.<sup>9</sup> Comparable provisos for electricity suppliers in Great Britain are set out in Schedule 6 of the Electricity Act 1989.<sup>10</sup> In both cases entry requires the consent of the occupier or owner in the case of an unoccupied premise. However, a warrant may be obtained in cases where consent is refused. As is the case above, a Justice of the Peace must be satisfied that entry is *'reasonable required'* before a warrant is granted.<sup>11</sup>

The Energy Miscellaneous Act 1995 affords parallel rights to electricity and gas suppliers in the Republic of Ireland. Section 15 of the act states that any person who interferes with an *'article owned by or under the control of the Electricity Supply Board or Bord Gáis Éireann shall be guilty of an offence'*. Whilst Section 16 enables an authorised officer to enter the premises of any individual suspected of committing an offence under Section 15. Where an authorised officer is refused entry a warrant may be sought from the District Court. The authorised body may also be accompanied by the Garda Síochána. An occupier refusing entry is liable to prosecution and may face a fine (of up to €1,500 for a summary offence and €10,000 on indictment) or imprisonment (of up to six months for a summary offence and three years on indictment).<sup>12</sup>

## 2.3 Discussion

Responses to the Departmental Energy Bill consultation process (published April 2010) reveal broad support for the extended powers of entry outlined above. Energy supply companies, including Phoenix Gas and Airtricity support the new provisions in that they are *'in the interests of public safety'* and create a *'disincentive for tampering'*. There

<sup>8</sup> The Electricity (Northern Ireland) Order 1992 (Schedule 6, paragraph 4 – 9)

[http://www.opsi.gov.uk/si/si1992/Uksi\\_19920231\\_en\\_11.htm#nsch6thepublicelectricitysupplycode](http://www.opsi.gov.uk/si/si1992/Uksi_19920231_en_11.htm#nsch6thepublicelectricitysupplycode)

<sup>9</sup> The Gas Act 1995, Schedule 2, Paragraphs 10, 25 & 26 [http://www.opsi.gov.uk/acts/acts1995/Ukpga\\_19950045\\_en\\_1](http://www.opsi.gov.uk/acts/acts1995/Ukpga_19950045_en_1)

<sup>10</sup> The Electricity Act 1989, Schedule 6, Paragraph 4 [http://www.opsi.gov.uk/acts/acts1989/ukpga\\_19890029\\_en\\_1](http://www.opsi.gov.uk/acts/acts1989/ukpga_19890029_en_1)

<sup>11</sup> Rights of Entry (Gas and Electricity Boards) Act 1954 (s2)

[http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1954/cukpga\\_19540021\\_en\\_1](http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1954/cukpga_19540021_en_1)

<sup>12</sup> The Energy Miscellaneous Act 1995, Sections 15-16

<http://www.irishstatutebook.ie/1995/en/act/pub/0035/sec0016.html#zza35y1995s16>

was also support for bringing regulations inline with other jurisdictions and with the electricity industry.<sup>13</sup>

Viridian Power and Energy, whilst supportive, argued that powers of entry could be further extended. To this effect the firm stated:

*...we also recommend taking this a step further so that licence holders have the ability to secure access to disconnect and remove metering equipment from those few customers that stubbornly refuse to settle their accounts. For the avoidance of doubt, we are not referring to vulnerable customers, and therefore suggest that this might be limited to those businesses that persistently flout a supplier's best endeavours to solicit payment<sup>14</sup>.*

Responses from consumer groups were cautiously supportive. The Consumer Council's response, for example, urged:

*...licence holders to act in a reasonable and fair manner. Customers should not be left without a supply of gas until such times as it has been **proven** that meter tampering has occurred... licence holders must not abuse their position and must demonstrate reasonable assurances of meter tampering before gaining access to meters.<sup>15</sup> (Emphasis in original)*

Citizens Advice expressed similar concerns, stating that they were not:

*...convinced that granting extend powers of access is the best way of tackling the issue. A range of other checks need to be carried out before accessing a consumer's premises and this should only be used as a last resort when all other checks have been balances have been exhausted.<sup>16</sup>*

To this the group added:

*The circumstances which licence holders will "suspect" that gas meters are being tampered with need to clearly defined in order that these powers would not be exploited by the licence holder. It is important that guidance is produced for the licence holder around the circumstances for access in cases of suspicion of meter tampering to ensure that any new access powers are used only where it is completely necessary and where all other attempts at determining whether a tampering situation exists are exhausted.<sup>17</sup>*

<sup>13</sup> Summary of DETI Energy Bill (formerly the Gas Bill) - Policy Consultation Response [http://www.detini.gov.uk/departmental\\_response\\_to\\_energy\\_bill\\_formerly\\_the\\_gas\\_bill\\_consultation](http://www.detini.gov.uk/departmental_response_to_energy_bill_formerly_the_gas_bill_consultation) (accessed 30/07/10)

<sup>14</sup> *Ibid*

<sup>15</sup> *Ibid*

<sup>16</sup> *Ibid*

<sup>17</sup> *Ibid*

During the second stage Assembly debate on the Bill, Members expressed similar concerns regarding the potential abuse of power that may result from extending rights of entry provisions.

Responding to these concerns, the Department argues that the existing access regime found in the Gas (Northern Ireland) Order 1996 ‘*already contains appropriate checks on exercise of those powers and safeguards to protect individuals from unwarranted intrusion*’. These checks, which will also apply to the new access provisions, place a burden of proof upon the gas conveyor in the sense that they will be required to satisfy a Justice of Peace that ‘*admission to the premises is **reasonably** required for the purpose specified in the complaint*’ should permission to enter not be secured from the owner/occupier.<sup>18</sup>

The concept of ‘**reasonable cause**’, which is found in Schedule five of the Gas Order 1996 and which will apply to new entry powers, has also caused some concern, primarily because the terms has not been robustly defined. On this the Department has stated:

*At this stage, the term has not been defined in the primary legislation. We will need regulations and secondary legislation that will drill down into much of the exact detail of how the regime will operate. The purpose of the primary legislation is to put in place the basic statutory powers, after which we will work through a further process on the detailed outworking of the scheme.*<sup>19</sup>

### 3 The introduction of a new offence of damaging a gas plant

#### 3.1 Energy Bill

As outlined in the previous section, the Bill includes a provision that ‘*any person who intentionally or by culpable negligence damages or allows to be damaged any gas plant provided by a gas conveyor shall be guilty of an offence*’. It adds upon summary conviction an individual will be liable to a fine ‘*not exceeding level 3 on the standard scale*’. The standard scale, outlined in the Fines and Penalties (Northern Ireland) Order 1984, as amended, sets level three fines at £1,000.<sup>20</sup>

#### 3.2 Precedent

As is the case with powers of entry, a corresponding offence already exists in the electricity sector. The Electricity (Northern Ireland) Order 1992 states it is offence to

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<sup>18</sup> The Gas (Northern Ireland) Order 1996 (schedule 5, paragraph 5-8)

<sup>19</sup> Northern Ireland Assembly Official Report, *Committee for Enterprise Trade and Investment, Draft Energy Bill: Briefing from DETI Energy Division* (29/03/2010)  
[http://www.niassembly.gov.uk/record/committees2009/ETI/100329\\_DraftEnergyBill.htm](http://www.niassembly.gov.uk/record/committees2009/ETI/100329_DraftEnergyBill.htm)

<sup>20</sup> The Energy Bill (Northern Ireland) 2010

intentionally or by culpable negligence damage any electric plant, line or meter belonging to a public electricity supplier. This offence is also subject to a fine not exceeding level three on the standard scale.<sup>21</sup>

The Gas Act 1995<sup>22</sup> and the Electricity Act 1989<sup>23</sup> created a corresponding offence for the respective sectors they cover in the rest of UK. Again, these offences are subject to a fine not exceeding level three on the standard scale.

Whilst similar offences exist in the Republic of Ireland the legislation (Energy (Miscellaneous Provision) Act 1995) outlines a more complex set of offences. That is, it is an offence to:

- dishonestly use, or cause to be wasted or diverted, any electricity or gas;
- unlawfully interfere with any article owned by or under the control of the Electricity Supply Board or Bord Gáis Éireann;
- manufacture, import, sell, offers for sale, supply or possess any thing designed or adapted to alter artificially the index to any meter owned by or under the control of the Electricity Supply Board or Bord Gáis Éireann, or to prevent the due registration by such a meter of a quantity of electricity or gas, as the case may be, supplied to any premises; and
- not take all reasonable steps to ensure interference is stopped if they suspect it is occurring.<sup>24</sup>

The first three offences are subject to a fine not exceeding €1,500 or imprisonment not exceeding 12 months in the case of a summary conviction. In the case of a conviction on indictment, this rises to a fine not exceeding €20,000 or imprisonment not exceeding five years. The latter offence is subject to a fine not exceeding €500 or imprisonment not exceeding three months in the case of a first offence, or a fine not exceeding €1,500 or imprisonment not exceeding six months in the case of a second or subsequent offence.<sup>25</sup>

### 3.3 Discussion

The creation of a new offence is not specifically addressed in the Department's summary of responses to the Energy Bill consultation process. Although, the broad support of extended powers of access on the basis that they provide a disincentive to meter tampering would imply support of this provision.<sup>26</sup>

<sup>21</sup> The Electricity (Northern Ireland) Order 1992 (s1(4))

[http://www.opsi.gov.uk/si/si1992/Uksi\\_19920231\\_en\\_11.htm#nsch6thepublicelectricitysupplycode](http://www.opsi.gov.uk/si/si1992/Uksi_19920231_en_11.htm#nsch6thepublicelectricitysupplycode)

<sup>22</sup> The Gas Act 1995 (schedule 2b, paragraph 10) [http://www.opsi.gov.uk/acts/acts1995/ukpga\\_19950045\\_en\\_3#sch2](http://www.opsi.gov.uk/acts/acts1995/ukpga_19950045_en_3#sch2)

<sup>23</sup> The Electricity Act 1989 (schedule 6, paragraph 4)

<sup>24</sup> The Energy Miscellaneous Act 1995, Sections 15-16

<http://www.irishstatutebook.ie/1995/en/act/pub/0035/sec0016.html#zza35y1995s16>

<sup>25</sup> *Ibid*

<sup>26</sup> Summary of DETI Energy Bill (formerly the Gas Bill) - Policy Consultation Response

[http://www.detini.gov.uk/departmental\\_response\\_to\\_energy\\_bill\\_formerly\\_the\\_gas\\_bill\\_consultation](http://www.detini.gov.uk/departmental_response_to_energy_bill_formerly_the_gas_bill_consultation) (accessed 30/07/10)

## 4 Guaranteed performance standards for the gas industry

### 4.1 Energy Bill

The Energy Bill will *‘enhance’* the consumer protection measures contained in the Gas (Northern Ireland) Order 1996 (the Order places a duty on suppliers to provide consumer protection to the chronically sick, the disabled and those of pensionable age, for example). This is to be achieved by *‘introducing legislative provisions that will allow the Department and the Utility Regulator to determine standards of performance in connection with the activities of licensed of licensed gas suppliers and those who are licensed to convey gas’*.<sup>27</sup>

When developed, standards of performance *will be applicable to each customer separately and failure to meet individual standards will give rise to a duty to pay compensation’*. Standards will take the form of percentage targets, to be met by gas companies, who will be required to publish their performance against such targets.<sup>28</sup>

As mentioned above, standards of performance will be determined by the Regulator and the Department. As part of the process of developing performance the Bill places a duty on the Regulator to: conduct any appropriate research *‘with a view to discovering the views of a representative sample of persons likely to be affected’*; publish proposals and consider any *‘representations which are duly made in respect of those proposals’*; and consult with Consumer Council, gas suppliers, and *‘persons or bodies appearing to the Authority to be representative of persons likely to be affected’* by the proposals.<sup>29</sup>

### 4.2 Precedent

The intention of the provisions above is to replicate standard practice in the electricity industry in Northern Ireland and the gas industries in the Republic of Ireland and the rest of the UK.

Electricity suppliers in Northern Ireland are already required to meet certain standards, set out in the Electricity (Standards of Performance) Regulations (Northern Ireland) 1999. Under these regulations Northern Ireland must meet the individual standards set out in Table 1 (compensation levels are also included). Overall standards and percentage targets are outlined in Table 2. In Great Britain, Gas standards are guaranteed by the Gas (Standards of Performance) Regulations 2005. These are outlined in Table 3. Similarly, in the Republic of Ireland, gas standards are found in the Bord Gáis charter, as outlined in Table 4. It is evident that there are marked similarities between all three guaranteed performance standards and it is likely that those introduced for gas suppliers in Northern Ireland will mirror those already in existence.

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<sup>27</sup> The Energy Bill (Northern Ireland) 2010

<sup>28</sup> *Ibid*

<sup>29</sup> *Ibid*

**Table 1: NIE Individual Guaranteed Standards of Performance<sup>30</sup>**

Service	Performance Level	Penalty Payment
Replacing NIE's main fuse after failure	Within 3 hours on a working day. Within 4 hours on any other day	£25
Restoring supply after distribution faults	Within 24 hours of supplier becoming aware of fault	£50 domestic customers £125 non-domestic plus £25 per additional 12 hours
Installing a meter and turning on electricity supply	Within 2 working days domestic customers or within 4 working days non-domestic customers	£25 plus £50 domestic or £125 non-domestic for failure to keep appointment
Providing and estimate for changing the position of a meter or for a new electricity supply	Within working days for connections to existing lines and 15 working days for others	£50
Notice of planned interruption of supply	3 days	£25 domestic £50 non-domestic
Investigating voltage complaints	Within 7 Working days to make an appointment. Within 5 working days to offer explanation	£25 pluses £35 for failure to keep and agreed appointment
Investigating meter accuracy disputes	Within 5 working days to reply or make a refund if required	£25 plus £35 for failure to keep and agreed appointment
Responding to queries on charges or payments	Within 5 working days to reply or make a refund if required	£25
Morning and afternoon appoints to be offers and kept	Between 8.30am and 1.00pm or 12 noon and 5.00pm	£25
Making of payments under the standards	Within 10 working days	£25
Dealing with pre-payment meter problems	Within 3 hours on a working day. Within 4 hours on any other day	£25

**Table 2: NIE Collective Guaranteed Standards of Performance<sup>31</sup>**

<sup>30</sup>OFREG Customer Service Standards Report 2000/01 *NIE Individual Guaranteed Standards of Performance*  
[http://www.niaur.gov.uk/uploads/publications/Report\\_on\\_Customer\\_Services\\_Standards\\_20002001\\_June\\_2002.pdf](http://www.niaur.gov.uk/uploads/publications/Report_on_Customer_Services_Standards_20002001_June_2002.pdf)  
 (accessed 20/08/09)

<sup>31</sup>OFREG Customer Service Standards Report 2000/01 *NIE Individual Guaranteed Standards of Performance*  
[http://www.niaur.gov.uk/uploads/publications/Report\\_on\\_Customer\\_Services\\_Standards\\_20002001\\_June\\_2002.pdf](http://www.niaur.gov.uk/uploads/publications/Report_on_Customer_Services_Standards_20002001_June_2002.pdf)  
 (accessed 20/08/09)

Service	Performance Level
Reconnection within 3 hours	87%
Reconnection within 24 hours	100%
Correction of voltage faults	100% within 6 months
connection to the system domestic	100% 30 working days
connection to the system non-domestic	100% 40 working days
Reconnection after default	100% the next working day after payment of arrears
Meter relocation	100% wanting 15 working days
Changing meter	100% within 10 working days
Meter reading	99.5% at least once a year
Response to letters	100% within 10 working days

**Table 3 Great Britain Gas Guaranteed Standards of Performance<sup>32</sup>**

Service	Performance Level	Penalty Payment
Provide explanation of likely cause of meter inaccuracy or make appointment	Provide probably explanation in writing within 5 working days, or offer to visit within 7 working days.	£20
Respond to failure of prepayment meter (this also applies to transferring credits and ensuring the meter is taking the right amount of debt)	Will respond within four hours. On a working day this is from 8am-8pm and any other day from 9am-5pm	£20
Making and keeping timed appointments	Arrange appointments either, morning (up to 1pm), afternoon (from 12pm) or within a 2-hour time-band and keep them.	£20
Making and keeping timed appointments (metering)	Arrange appointments either, morning (up to 1pm), afternoon (from 12pm) or within a 2-hour time-band and keep them.	£20
Advise customers of payment due under the standards	The supplier will both notify the consumer and make payment within 10 working days.	£20
Advise customers of payments due under the standards (metering)	The supplier will both notify the consumer and make payment within 10 working days.	£20

**Table 4: Bord Gáis Charter<sup>33</sup>**

<sup>32</sup> Consumer Focus *Gas Guaranteed Standards of Performance*

[http://www.consumerfocus.org.uk/en/content/cms/Energy\\_Help\\_Advice/Your\\_energy\\_question/Your\\_energy\\_question.aspx](http://www.consumerfocus.org.uk/en/content/cms/Energy_Help_Advice/Your_energy_question/Your_energy_question.aspx) (accessed 21/09/08)

<sup>33</sup> Bord Gáis Charter <http://www.bordgais.ie/networks/index.jsp?1nID=102&2nID=115&3nID=348&nID=641> (accessed 21/08/09)

Service	Performance Level	Penalty Payment
Quotations Turnaround of works at premises/sites involving domestic customers	Within 7 working days of receipt of required technical data	€ 65
Appointment Granting - am or pm appointments subject to availability	Scheduled within 5 working days of request or four working weeks for domestic service lay appointments (upon receipt of payment)	€ 35
Service delivery - on-site service provided on appointed day or notice of cancellation provided	notice of cancellation given within 1 working	€50 for failure to notify of cancellation
Reinstatement commitments - applies if the digging of holes is required on premises to lay pipes	Temporary hole filling within 24hrs of work, permanent hole filling within 20 working days	€10 per day if temporary hole filling is not carried out, €50 per week for failure to complete permanent hole filling
Gas supply interruption	2 working days notice	€35 for domestic customers, €130 for non-domestic
Response to emergencies	within one hour or as soon as possible	n/a
Gas supply restoration	end of next day after notification	€65 domestic, €130 non-domestic plus additional claims available for every 24hr period without restoration up to €500 for domestic customers and €1,000 for non-domestic
Complaints handling	Phone complaints acknowledged within 1 working day of receipt and updates within 3 working days. Complaints requiring a site visit to be rectified within 30 working days, subject to a site inspection within 10 working days. Complaints requiring no site visit to be resolved within 10 working days	n/a
Payment guarantee	compensation cheque within 10 working days	€ 35

### 4.3 Discussion

The consultation process revealed a mixed reaction to the introduction of standards of performance. There was a general acceptance of the need for such standards from most gas suppliers and from consumer groups. The requirement for supply companies who fail to meet standards to financially compensate consumers for failure drew mixed

responses – that is consumer groups were conditionally supportive of the proposal, while responses from gas supply companies ranged from unsupportive to wary.<sup>34</sup>

Phoenix Energy Holdings Limited noted that they currently operated to standards of performance that were endorsed by the Regulator and the Consumer Council. These standards state that the company ensure:

- all calls are answered promptly;
- written correspondence will receive a reply within ten working days;
- all complaints are recorded and classified;
- connection will be offered to customers within 15 working days where gas is available;
- uncontrolled gas escapes will be attended within one hour of notification;
- controlled gas escapes will be attended within two hours of notification;
- alternative heating and cooking facilities are provided when gas supply is disconnected for safety reasons;
- promote the energy efficiency; and
- reconnection after a fault will take place within twenty-four hours.<sup>35</sup>

The Consumer Council was supportive of Phoenix's early introduction of performance standards and urged '*all gas companies to implement guaranteed standards of performance on a voluntary basis to address the inequality between electricity and gas consumers to more quickly than the legislative timescale*'.<sup>36</sup>

The two groups disagreed on the issue of financial compensation, specifically how it is to be funded. The Consumer Council:

*...strongly advocates that the compensation awarded to consumers for failed delivery must come from the profits of the gas company... [It] would negate any incentive on companies to deliver high standards if the companies were simply allowed to pass on any additional cost to their customer base.*<sup>37</sup>

Statements from Phoenix imply that the company would like to see the opposite scenario become standard practice. In its response, for example, the company asked:

*How would measures to guarantee standards of practice of service to be funded e.g. would the cost of putting in additional systems, processes,*

<sup>34</sup> Summary of DETI Energy Bill (formerly the Gas Bill) - Policy Consultation Response  
[http://www.detini.gov.uk/departmental\\_response\\_to\\_energy\\_bill\\_formerly\\_the\\_gas\\_bill\\_consultation](http://www.detini.gov.uk/departmental_response_to_energy_bill_formerly_the_gas_bill_consultation) (accessed 30/07/10)

<sup>35</sup> *Ibid*

<sup>36</sup> *Ibid*

<sup>37</sup> *Ibid*

*procedures and resources be allowed in each companies cost base? **And would this include financial compensation?***<sup>38</sup>

Furthermore, they stated:

*If following the introduction of the new legislation, gas suppliers are required to write to consumers advising them of the applicable standards we would expect [the] Utility Regular to retrospectively allow costs within each companies cost base.*

On this issue the Department has stated:

*Again, the detail will be worked out with the regulator. However, our feeling is that there should not be penalties on all customers; for example, with regard to price controls. Any default on standards by the gas companies should be borne by the company.*<sup>39</sup>

Gas Link, whilst accepting of the need to introduce standards of performance, were dismissive of the notion of financial compensation, stating:

*Instead of requiring gas companies to financially compensate consumers, the Regulator could seek to ensure optimum service is provided by monitoring performance standard on an ongoing basis. Gas companies should be allowed to develop their own resolution mechanisms to govern disputes concerning standards of performance.*<sup>40</sup>

Viridian argued that the imposing of standards of performance on gas supply companies would serve as a:

*...disincentive to develop service levels that go beyond the regulated baseline, in other words, it can act as a baseline service level that frustrates service innovation. And no matter how well crafted, it can also have unintended consequences, such as a focus on regulated standards to the detriment of other service levels in an effort to manage limited service*<sup>41</sup>.

The company proposed instead, that service standards performance are introduced into the network service side of the industry by way of a price control mechanism. Airtricity, while generally supportive of the proposals raised a similar point, stating:

*...it will be important that overall standards of performance reflect the contribution different providers (suppliers and transporters) involved in the delivery of the service.*<sup>42</sup>

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<sup>38</sup> *Ibid*

<sup>39</sup> Committee for Enterprise, Trade and Investment, Official Report (Hansard) *Draft Energy Bill: Briefing from DETI Energy Division* 29 March 2010 [http://www.niassembly.gov.uk/record/committees2009/ETI/100329\\_DraftEnergyBill.htm](http://www.niassembly.gov.uk/record/committees2009/ETI/100329_DraftEnergyBill.htm)

<sup>40</sup> *Ibid*

<sup>41</sup> *Ibid*

<sup>42</sup> *Ibid*

And:

*...it is important that suppliers are not penalised are not unfairly penalised by for service failures resulting from non-performance by monopoly, third-party providers.<sup>43</sup>*

The Department responded to this stating that the Regulator should be given *'the power to make regulations setting individual and overall standards of performance for gas suppliers and conveyors'*. This is reflected in Section 1 of the Bill. The Regulator has informed the Committee for Enterprise, Trade and Development that it will carry out a public consultation on guaranteed standards of performance

Citizens Advice's response was favourable to the introduction of standards of performance and placing a requirement on supplier to pay financial compensation when such standards are not met. The group were of the opinion that the provisions could go further to protect vulnerable groups. As such they requested that standards of performance be introduced around debt collection and arrears. Furthermore, on the issue of consumer protection, they state:

*Consumers in England and Wales have access to charitable funds set up by companies such as British Gas and United Utilities, and can also access such schemes as fuel direct. Citizens Advice would like to see similar schemes available in Northern Ireland.<sup>44</sup>*

## 5 Gas meter stamping and testing

### 5.1 Energy Bill

The Bill will amend the Gas (Northern Ireland) Order 1996, with respect to meter reading, removing the phrase *'who are members of the Director's staff'*. This will alter current arrangements under which the Utility Regulator is required to appoint meter examiners from within the organisation, allowing the Regulator to delegate responsibility to delegate gas meter testing and functions, rather than carrying out such functions in house.<sup>45</sup>

### 5.2 Precedent

The amendments outlined above will bring Northern Ireland in line with practice in the UK. Section 17, subsections five and six of the Gas Act 1986 enable the Director to authorise a *'competent and impartial'* person to carry out meter stamping and testing.<sup>46</sup>

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<sup>43</sup> *Ibid*

<sup>44</sup> *Ibid*

<sup>45</sup> The Energy Bill (Northern Ireland) 2010

<sup>46</sup> The Gas Act 1986 (as amended) s17(5-6)

[http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1986/cukpga\\_19860044\\_en\\_6#pt1-pb6-l1q31](http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1986/cukpga_19860044_en_6#pt1-pb6-l1q31)

### 5.3 Discussion

The proposal to allow the Regulator delegate meter stamping and testing functions was broadly welcomed and seen as uncontroversial by all respondents to the departmental consultation. Gas suppliers expressed concern that the ultimate responsibility for meter reading should remain with the Regulator. The Department have confirmed that this will be the case.

On this issue, the Consumer Council stated that they:

*...do not believe that the responsibility should reside within the gas industry, especially in cases of a meter dispute [and] would recommend the delegation by NIAUR to an appropriate independent body for verification and testing...*

In response the Department have stated that *'only competent and impartial persons should be appointed as meter examiners'*.<sup>47</sup>

## 6 Deemed contract provisions

### 6.1 Energy Bill

The Energy Bill will introduce 'deemed contracts' into the gas market. A deemed contract applies, for example, when a customer moves home, but has not proactively signed up to a gas contract. In such circumstances a customer will *be 'deemed to have automatically taken over the contract with the gas or electricity supplier of the previous occupant'* and will, *'by default be placed on a 'deemed tariff' with that supplier'*.<sup>48</sup> As such, deemed contracts exist *'between a customer and a gas supplier where no written or verbal agreement has been exchanged'*.<sup>49</sup> The Bill states that a deemed contract will be effective *'from the time (the 'relevant time') when the owner or occupier began to take such a supply'*.<sup>50</sup>

Under the terms on the Bill gas suppliers are required to *'make, and from time to time revise'* a scheme that sets out the terms conditions of deemed contracts. Such schemes must be published *'in such [a] manner as the supplier considers appropriate for bringing it to the attention of persons likely to be affected by it'*. Deemed contract

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<sup>47</sup> Summary of DETI Energy Bill (formerly the Gas Bill) - Policy Consultation Response  
[http://www.detini.gov.uk/departmental\\_response\\_to\\_energy\\_bill\\_formerly\\_the\\_gas\\_bill\\_consultation](http://www.detini.gov.uk/departmental_response_to_energy_bill_formerly_the_gas_bill_consultation) (accessed 30/07/10)

<sup>48</sup> The Energy Shop *Energy Contracts – what is a deemed contract?*  
<http://www.theenergystore.com/help/faqs/contracts.do?sessionid=0747114DD6A985BFDD501CAECF06FE46> (accessed 16/07/10)

<sup>49</sup> Northern Ireland Assembly Official Report *Energy Bill: Second stage – the Minister of Enterprise Trade and Investment* (15/06/10) <http://www.niassembly.gov.uk/record/reports2009/100615.htm>

<sup>50</sup> The Energy Bill (Northern Ireland) 2010 (s12)

schemes should also be sent to the Northern Ireland Authority for Utility Regulation (the Authority) and to the Consumer Council.<sup>51</sup>

## 6.2 Precedent

Similar arrangements regarding deemed contacts are found in schedule 6, paragraph 5 of the Electricity Regulations (Northern Ireland) 2007<sup>52</sup>. For the rest of the UK they are set out in schedule 2b, paragraph 8 of the Gas Act 1995<sup>53</sup>, and schedule 6, paragraph 3 of the Electricity Act 1989<sup>54</sup> (as amended by schedule 4 paragraph 3 of the Utilities Act 2000<sup>55</sup>). In the Republic of Ireland the Energy (Miscellaneous Provisions) Bill, expected for publication in 2011, will include deemed contract provisions in its content.<sup>56</sup>

As is the case with the deemed contracts outlined in the Energy Bill, the three pieces of UK legislation that set out provisions for such contracts in the electricity and gas industries do not contain specific terms and conditions, rather they place a requirement on electricity suppliers to provide a *scheme* that sets out terms and conditions. Such schemes should be published in a manner considered appropriate, it should also be forwarded to the relevant authority and consumer body.

In the UK, the terms and conditions of gas industry deemed contracts are outlined in the Gas Suppliers Standard License Conditions. Amongst these conditions are stipulations that:

- 'the terms of its deemed contracts are not unduly onerous';
- revenue derived from supplying gas through a deemed contract does not significantly exceed the cost of supplying gas and that it does not exceed the cost of supply by significantly more than is the case for the generality of customers;
- the supplier provide a customer with terms of the deemed contract and details of other contracts available; and
- in determining the kilowatt hours of gas which are to be treated as supplied or taken under a deemed contract, the supplier shall act on a reasonable basis.<sup>57</sup>

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<sup>51</sup> *Ibid*

<sup>52</sup> Electricity Regulations (Northern Ireland) 2007 (schedule 6, paragraph 3)

[http://www.opsi.gov.uk/sr/sr2007/nisr\\_20070321\\_en\\_5](http://www.opsi.gov.uk/sr/sr2007/nisr_20070321_en_5)

<sup>53</sup> The Gas Act 1995 (schedule 2b, paragraph 8) [http://www.opsi.gov.uk/acts/acts1995/ukpga\\_19950045\\_en\\_3#sch2](http://www.opsi.gov.uk/acts/acts1995/ukpga_19950045_en_3#sch2)

<sup>54</sup> The Electricity Act 1989 (schedule 6, paragraph 3)

<sup>55</sup> Utilities Act 2000 (schedule 4, paragraph 3) [http://www.opsi.gov.uk/acts/acts2000/ukpga\\_20000027\\_en\\_17](http://www.opsi.gov.uk/acts/acts2000/ukpga_20000027_en_17)

<sup>56</sup> Department of the Taoiseach, *Government Legislation Programme*

[http://www.taoiseach.gov.ie/eng/Taoiseach\\_and\\_Government/Government\\_Legislation\\_Programme/SECTION\\_C11.html](http://www.taoiseach.gov.ie/eng/Taoiseach_and_Government/Government_Legislation_Programme/SECTION_C11.html)

(accessed 19/07/10)

<sup>57</sup> OFGEM Standard Conditions of gas supply licence as made - 01/08/2007 <http://epr.ofgem.gov.uk/index.php?pk=doc431303>

### 6.3 Discussion

The Consumer Council and Citizens Advice have both welcomed the deemed contract proposals, commenting that they provide protection to and benefits for both gas companies and consumers.

There support, however, was conditional. Citizens Advice had sought assurances that the:

*... 'deemed tariff' will not penalise these consumers in any way and that consumers in this situation will be speedily moved to an agreed contract tariff.*<sup>58</sup>

The Consumer Council also raised concerns regarding consumer protection, requesting that the following be considered:

- customers on deemed contracts will be charged the published tariff;
- customers on deemed contracts should not be restricted in a competitive market and must be free to shop around;
- domestic customers on deemed contracts should not be prevented from switching supplier if they are in debt, in the way domestic contracted customers are not;
- customers on deemed contracts should be provided with a copy of the deemed contract on their request. Suppliers should also make available a copy of the deemed contract on their website; and
- deemed contracts should be developed in consultation with the Consumer Council.<sup>59</sup>

In response to these issues, the Department drew attention to the element of the proposals which will *'provide the Utility Regulator with the power to make licence modifications for the purposes of the deemed contracts regime'*. Such changes may include additional consumer protection, as is the case gas with the Gas Suppliers Standard License Conditions outlined above.

Suppliers were also supportive of the proposals. Airtricity commented that the *'concept of deemed contracts is extremely important'*. The added, however, that the *'counterparty for the deemed contract needs to be more closely defined'*. The company expressed the opinion that the counter party should be:

*... jointly and severally the person(s) who is/are, or appear to be, in control of the premises, rather than the supplier having to prove and individual/corporate entity is the actual legal owner or occupier of the premises.*<sup>60</sup>

<sup>58</sup> Summary of DETI Energy Bill (formerly the Gas Bill) - Policy Consultation Response  
[http://www.detini.gov.uk/departmental\\_response\\_to\\_energy\\_bill\\_formerly\\_the\\_gas\\_bill\\_consultation](http://www.detini.gov.uk/departmental_response_to_energy_bill_formerly_the_gas_bill_consultation) (accessed 30/07/10)

<sup>59</sup> *Ibid*

<sup>60</sup> *Ibid*

To this the Department responded:

*...the Department considers that (consistent with the approach taken in GB (gas) and NI (electricity)) only the owner of occupier should be liable, and that joint and several liability would not be appropriate.<sup>61</sup>*

Viridian Power and Energy also supported the proposals, although they added that from a supplier's perspective:

*...it is also important to ensure that the deemed contract terms provided by suppliers are allowed to differentiate in some respects from the standard contract terms, to encourage customers to enter into more formal arrangements.*

They also expressed similar concerns to consumer groups regarding, and sought clarification on:

- the duration of deemed contracts;
- the applicable tariffs under such contracts; and
- the ability of customers to change supplier.

The Department again noted that the:

*...Utility Regulatory will have the power to make licence modifications and such modifications may impose additional conditions on what the terms and conditions may be. The proposed approach is consistent with that in place in the contracts regime in the electricity industry.<sup>62</sup>*

## 7 Special administration regime for gas and electricity industries

### 7.1 Energy Bill

Clauses 17 to 33 of the Bill will introduce a special administration regime for gas conveyance and electricity transmission and distribution companies (protected companies) facing 'actual or threatened insolvency'. The Bill applies the definition of a gas conveyance company set out in Article 8 (1a) of the Gas (Northern Ireland) Order 1996. A gas conveyor, therefore, refers to a person licensed to 'convey gas from one place to another in an area authorised by the license'.<sup>63</sup> As such, the provisions set out in this section of the Bill will not apply to gas supply or gas storage firms.

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<sup>61</sup> *Ibid*

<sup>62</sup> *Ibid*

<sup>63</sup> The Gas (Northern Ireland) Order 1996 (Article 8 (1a)) [http://www.opsi.gov.uk/si/si1996/Uksi\\_19960275\\_en\\_3.htm#mdiv8](http://www.opsi.gov.uk/si/si1996/Uksi_19960275_en_3.htm#mdiv8)

Similarly, the Bill protects electricity transmission and distribution companies, adopting the definition found in Article 10(1b) of the Electricity (Northern Ireland) Order 1992.<sup>64</sup> As such, the provisions of the Bill will not apply to electricity generators and suppliers.

The purpose of this section of the Bill is to alter typical insolvency arrangements which maintain that an insolvent company's primary responsibility will be to its creditors. The provisions outlined in the Bill switch the focus of an insolvent company's primary focus towards consumers. That is, the Bill will enable gas and electricity networks to remain in place and ensure continued supply of energy to consumers in the event of a company failure.<sup>65</sup>

The 16 clauses that make up this section of the Bill:

- define an "energy administration order" as an order made by the High Court in relation to protected company and directs that, while the order is in force, the affairs, business and property of the company are to be managed by a person by the Court', to be known as the 'energy administrator';
- specify an energy administration order's primary objective— to ensure *'the company's system is and continues to be maintained as an efficient, economical and co-ordinated system'* or, if it becomes necessary, allow for the rescue of the company as a going concern, or the transfer of the company (or its constituent parts) to another company (or companies);
- provide that a company or part of a company may be transferred to a wholly owned subsidiary of that company;
- outline the context within which such transfers are applicable – when the rescue as a going concern of company is not practical, when such transfers would produce a scenario more favourable to creditors than rescue as a going concern, and when transfer would produce a favourable result for the company's members as a whole (not prejudicing creditors) that would not be achievable if it were rescued as a going concern;
- restrict the bodies permitted to apply for an energy administration order to the Department or the Regulator subject to departmental consent;
- outline the powers of the court – make an administration order, dismiss the application, adjourn the hearing, make an interim order, treat the application as a winding-up application and make any order it is entitled to under Article 105 of the Insolvency Order, or make any other order it thinks appropriate;
- limit the powers of the court to make an energy administration order to a scenario in which the company is unable to pay debts, unlikely to pay debts or a petition wind-up the company has been issued by the Department;

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<sup>64</sup> The Electricity (Northern Ireland) Order 1992 (Article 10 (1b))

<sup>65</sup> Northern Ireland Assembly Official Report *Energy Bill: Second stage – the Minister of Enterprise Trade and Investment* (15/06/10) <http://www.niassembly.gov.uk/record/reports2009/100615.htm>

- define role of the energy administrator as carrying out the companies affairs in pursuit of the energy administration orders primary objective – to ensure the continuation of supply;
- provide that the administrator must also act in the interest of the creditor and in the interest of the company members;
- place restrictions on winding-up orders, voluntary winding up, making ordinary administration orders, on administration appointments by creditors and upon enforcement of security – the intention here is to prevent an energy order from *'being frustrated by prior orders of various types being granted before the Department or th Utility Regulator have been given an opportunity to apply for an energy administration order'*;
- enable the Department, subject to Department of Finance of Personnel consent, to provide a grant or loan in order to achieve the primary purpose of an energy administration order;
- enable the Department, subject to Department of Finance of Personnel consent, to indemnify persons in respect of liabilities incurred or loss or damage sustain in connection with an energy administration order;
- enable the Department, subject to Department of Finance of Personnel consent, to provide guarantees in relation to a protected energy company in energy administration – specifically to guarantee sums borrowed by the protected company, interest on those and the discharge of any other financial guarantee; and
- enable the Department to modify the conditions of gas and supply licenses to provide for shortfall in property for a protected company to meet the cost of energy administration.<sup>66</sup>

## 7.2 Precedent

The provisions outlined in articles 17 to 33 of the Energy Bill reflect those found in articles 154 to 169 of the Energy Act 2004 which extend to England, Scotland and Wales.<sup>67</sup>

## 7.3 Discussion

As is the case with the other provisions outlined in the Bill, consultation responses were, in general, supportive of a special administration scheme. There was a degree of uncertainty (at the consultation stage) as to whether the proposals would apply to suppliers. In response the Department clarified that the provisions would only apply gas conveyance and electricity transmission licence holders (as is made clear in the Bill itself). A number of concerns expressed by respondents were negated by the fact that the proposals were not applicable to suppliers.

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<sup>66</sup> The Energy Bill (Northern Ireland) 2010

<sup>67</sup> The Energy Act (Articles 154-169) [http://www.opsi.gov.uk/acts/acts2004/ukpga\\_20040020\\_en\\_15#pt3-ch3](http://www.opsi.gov.uk/acts/acts2004/ukpga_20040020_en_15#pt3-ch3)

Some issues were raised however. The Insolvency Service made the following observation:

*...that the measures...do not seem to address the possibility of a major gas company simply deciding to cease operations outside of any insolvency proceedings or perhaps still solvent. What would happen to its customers in this eventuality?*<sup>68</sup>

To which the Department replied:

*In relation to the issue of an energy network company simply deciding to cease operations, the Department expect that the Utility Regulator would assess whether to enforce action for breach of licence.*<sup>69</sup>

The Insolvency Service also queried:

*...what happens if a company is in fact a transnational company with a main centre of operations in another EU State or even outside the EU, and insolvency proceedings are taken against the company in that state? Do you need to do anything to preserve continuity of supply if the company ceases to trade internationally, including in Northern Ireland, as a consequence of such proceedings taken against it wherever it is headquartered abroad?*<sup>70</sup>

The Department are of the view that:

*...if the company has its centre of main interests in a foreign jurisdiction then the insolvency law in the jurisdiction will apply. This is normal and cannot be circumnavigated*<sup>71</sup>.

As alternative to the introduction of a special administration scheme, the Insolvency Service put forward the following suggestion:

*...should the government be given the right to appoint a person to run a gas or electricity undertaking in the event of the owner deciding to cease operations for any reason? This could be an interim measure until a private sector buyer could be found?*<sup>72</sup>

On this issue the Department stated:

*...there is no corresponding alternative or supplemental measure of this nature in the special administration schemes for energy (in GB) or water (in NI). As the Department's proposals are intended to broadly follow those*

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<sup>68</sup> Summary of DETI Energy Bill (formerly the Gas Bill) - Policy Consultation Response  
[http://www.detini.gov.uk/departmental\\_response\\_to\\_energy\\_bill\\_formerly\\_the\\_gas\\_bill\\_consultation](http://www.detini.gov.uk/departmental_response_to_energy_bill_formerly_the_gas_bill_consultation) (accessed 30/07/10)

<sup>69</sup> *Ibid*

<sup>70</sup> *Ibid*

<sup>71</sup> *Ibid*

<sup>72</sup> *Ibid*

*regimes, the Department considers it unnecessary for the Energy Bill to specifically provide for such alternative or supplementary measures.*<sup>73</sup>

Bord Gáis Networks supported in the introduction of a special administration adding that the *'likelihood of such arrangements being called upon in the case of a conveyance licence holders to be minimal'*.<sup>74</sup>

## 8 Gas storage provisions

### 8.1 Energy Bill

The Bill will clarify the offence (under the Gas Order 1996) of storing gas without authorisation by adding the clause:

*For the purposes of this Order a person stores gas in a gas storage facility if (and only if) that person is the operator of that facility.*<sup>75</sup>

The introduction of this clause is intended to clarify the meaning of the word 'store' and to formally distinguish the operator and user of a gas storage facility, that is it confirms that only the operator of a gas storage facility will store gas for the purposes of the 1996 Gas Order.

### 8.2 Discussion

The revisions to the 1996 order outlined above are technical, summarising their purpose the Department stated:

*A regime to allow the Department and the Utility Regulator to consent to a gas storage facility in Northern Ireland exists, and the changes proposed are relatively minor and will clarify who has the legal responsibility.*<sup>76</sup>

At the consultation stage concerns were raised regarding third party access rights and the need to 'enshrine' such rights in legislation. On this issue the Department commented:

*There is an existing UK (Department of Energy and Climate Change) regime for offshore gas storage. However, the regulation of third party access to gas storage facility in Northern Ireland's territorial waters appears to be unregulated. The issue arises in the context of a framework of legislation that is particularly complex. With the advent of the Third EU Directive, as well as other considerations (such as the fact there are no*

<sup>73</sup> *Ibid*

<sup>74</sup> *Ibid*

<sup>75</sup> The Energy Bill (Northern Ireland) 2010

<sup>76</sup> Committee for Enterprise, Trade and Investment, Official Report (Hansard) *Draft Energy Bill: Briefing from DETI Energy Division* 29 March 2010 [http://www.niassembly.gov.uk/record/committees2009/ETI/100329\\_DraftEnergyBill.htm](http://www.niassembly.gov.uk/record/committees2009/ETI/100329_DraftEnergyBill.htm)

*such facilities in Northern Ireland territorial waters in operation of being proposed), this issue will not be dealt within in the Energy Bill but may be dealt with in future legislation.<sup>77</sup>*

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<sup>77</sup> *Ibid*