

Committee for Enterprise, Trade and Investment

Report on the Energy Bill

Together with the Minutes of Proceedings of the Committee
Relating to the Report and the Minutes of Evidence

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Session 2010/2011

Second Report

Membership and Powers

Powers

The Committee for Enterprise, Trade & Investment is a Statutory Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, Section 29 of the Northern Ireland Act 1998 and under Assembly Standing Order 46. The Committee has a scrutiny, policy development and consultation role with respect to the Department for Enterprise, Trade & Investment and has a role in the initiation of legislation.

The Committee has power to:

- Consider and advise on Departmental Budgets and Annual Plans in the context of the overall budget allocation;
- Approve relevant secondary legislation and take the Committee stage of relevant primary legislation;
- Call for persons and papers;
- Initiate inquiries and make reports; and
- Consider and advise on matters brought to the Committee by the Minister for Enterprise, Trade & Investment.

Membership

The Committee has 11 members, including a Chairperson and Deputy Chairperson, and a quorum of five members.

The membership of the Committee is as follows:

Mr Alban Maginness (Chairperson)¹
Mr Paul Butler (Deputy Chairperson)⁴
Ms Jennifer McCann
Mr Leslie Cree
Ms Claire McGill^{5, 6, 9}
Mr Paul Givan^{2, 8, 11}
Mr William Irwin^{3, 10}

Mr Paul Frew7
Dr Alasdair McDonnell MP
Mr Gerry McHugh
Mr Sean Neeson

- 1 With effect from 30 June 2009 Mr Alban Maginness replaced Mr Mark Durkan.
- 2 With effect from 14 September 2009 Mr David Simpson replaced Mr Robin Newton.
- 3 With effect from 14 September 2009 Mr Gregory Campbell replaced Mr Jim Wells.
- 4 With effect from the 14 September 2009 Mr Paul Butler replaced Ms Jennifer McCann as Deputy Chairperson
- 5 With effect from the 31 March 2010 Mr Alan McFarland stood down from membership of the Committee
- 6 On 13th April 2010 Mr Daithí McKay was appointed as a Member of the Committee for Enterprise, Trade and Investment.
- 7 With effect from 28 June 2010 Mr Paul Frew replaced Mr Stephen Moutray.
- 8 With effect from 1st July 2010 Mr David Simpson resigned as a member.
- 9 With effect from 13 September 2010 Ms Claire McGill replaced Mr Daithí McKay.
- 10 With effect from 13 September 2010 Mr William Irwin replaced Mr Gregory Campbell.
- 11 On 13 September 2010 Mr Paul Givan was appointed as a member of the Committee for Enterprise, Trade and Investment.

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Executive Summary

Purpose

1. The Report details the Committee for Enterprise, Trade & Investment's consideration of the Energy Bill (the Bill). The Bill is intended to update current legislation applying to the natural gas sector in Northern Ireland, to benefit from policies that had already been successfully implemented in the electricity sector and to introduce legislation to create a special administration regime applicable to both the gas and electricity sectors.

Principles of the Bill

2. The Committee welcomed the introduction of the Bill. The Committee considered the principles of the Bill to be to:

- Safeguard the interests of customers through the provision of guaranteed standards of performance applicable to gas licence holders;

- Provide a sound and binding basis upon which suppliers will supply customers where supplies of gas are taken without the customer having first agreed contractual terms with the supplier, through the provision of deemed contracts;
- Extend the powers of entry into premises for gas companies so that they broadly align with the powers available to electricity companies; and
- Help ensure the uninterrupted operation of gas and electricity networks through the introduction of a special administration regime relating to network companies which are threatened with insolvency or become insolvent.

3. The Committee engaged in a call for evidence and consulted with a range of stakeholders with a variety of interests. Written responses were received from the following organisations:

- Advice NI;
- Consumer Council for Northern Ireland;
- Northern Ireland Authority for Utility Regulation (NIAUR/Utility Regulator);
- Northern Ireland Electricity plc;
- Northern Ireland Assembly Committee for Social Development;
- Northern Ireland Assembly Committee for the Office of the First Minister and deputy First Minister; and
- Phoenix Energy Holdings Group.

4. The Committee heard oral evidence from the Consumer Council for Northern Ireland and NIAUR.

Key Issues

5. The Committee had concerns about the how gas licence holders would recoup monies paid to customers in compensation for failure to deliver adequate standards of service. The Committee also sought clarification on the how it would be ensured that gas licence holders would act in a fair and reasonable manner when exercising their powers of entry to customers' premises.

6. The Committee considered that the key issues relating to the Bill were the need to ensure that:

- In compensating customers for failure to deliver adequate standards of service, monies are not recovered from the gas licence holder's customer base;
- The provisions in relation to Clause 10, "Damage to Gas Plant" are appropriate from the point of view of both the consumer and the gas licence holder.
- In exercising their powers of entry to customers' premises, gas licence holders act reasonably and fairly; and
- In exercising their powers of entry to customers' premises, there are no safety issues associated with the need for a warrant to be issued by Justice of the Peace in order to gain entry to premises.

Recovery of monies paid to customers for failure to deliver adequate standards of service

7. The Consumer Council informed the Committee that, in its view, compensation payments made for failure to deliver adequate standards and service should come from the profits of the energy companies and not from a company's customer base.

8. In response, the Department stated that the Bill makes provision for a gas supplier or conveyer to pay a prescribed compensation to consumers where the relevant standard of performance has not been met. The Department informed the Committee that it will work with the Consumer Council and the Utility Regulator in relation to the outworking of the guaranteed standards of performance legislation for the natural gas industry. All proposals, including those relating to compensation payments, will be subject to public consultation. The Department expects that guaranteed standards will operate in the same way in the gas sector as the electricity regime.

9. The Regulator has advised that, in relation to electricity standards of performance, there is no regulatory allowance within electricity price controls to cover guaranteed standards. Electricity companies are expected to fund this.

Provisions in relation to Clause 10

10. In giving oral evidence to the Committee the Consumer Council stated that they are concerned about the term "culpable negligence" in the Bill, stating that it implies that a person would be guilty of that offence if they did nothing to stop another damaging their meter, and would therefore, be negligent as a result of someone else's actions.

11. The Department informed the Committee that it has liaised with the Office of Legislative Counsel (OLC) regarding this matter who has advised that "culpable negligence" denotes a high degree of negligence which merits criminal sanctions and is more commonly referred to as "gross negligence". The Department would consider it desirable to retain Clause 10(1) as originally drafted to keep the gas provisions in line with equivalent Northern Ireland electricity legislation. As the Department was unable to provide a clear definition of the term "culpable negligence" and was unable to provide clarification on how the term would be applied in practice, the Committee has recommended that Clause 10(1) be amended to remove this term from the Bill.

12. In giving oral evidence to the Committee, the Utility Regulator's representative agreed with the Committee that it may be helpful to add the term "its repair" so that Clause 10(4) reads, "A meter removed under subsection (3) shall be kept safely by the gas conveyer until the Authority authorises its destruction, disposal or repair." The Department has been advised that the natural gas industry would be content with the revised wording and accept that, in certain circumstances, it would be feasible for meters to be repaired rather than disposed of or destroyed.

Exercising of powers of entry by gas licence holders

13. In light of a query raised by the Committee in relation to Clause 14, the Department re-examined Clause 10 to ensure that its provisions for damage to gas plant fully encompass meter tampering. Its conclusion was that it would be desirable to amend Clause 10(1) to specifically refer to tampering with gas meters in order to avoid any doubt about whether tampering/interfering with a meter necessarily amounts to damaging it.

14. In response to a query from the Committee during pre-legislative scrutiny the Consumer Council responded that gas licence holders should have the same access rights as electricity licence holders to enter premises if they suspect meter or fittings have been tampered with.

15. The Department responded that the provisions regarding power of entry to property by gas companies is in line with provisions within the Electricity (NI) Order 1992 for the electricity industry in Northern Ireland.

16. In order to protect individuals from 'unwarranted intrusion', a gas company wishing to enter premises must obtain the consent of the occupier of the premises. If occupier consent is not obtained, then the gas company must be able to demonstrate 'reasonable suspicion' and thereby satisfy a Justice of the Peace that there are grounds to warrant entry to a customer's premises.

Introduction

17. At the commencement of pre-legislative scrutiny, the Bill was entitled the Gas Bill. In February 2010, the Minister for Enterprise, Trade & Investment wrote to the Committee to state that it had been renamed the Energy Bill in order to take account of additional provisions which also cover electricity.

18. The Energy Bill was introduced to the Northern Ireland Assembly on 1st June 2010. The Assembly debated the principles of the Bill in the Second Stage on 15th June 2010 when the Bill was passed to the Committee for Enterprise, Trade & Investment. The Committee sought and received approval of the Assembly in Plenary Session on 20th September 2010 to extend its consideration and scrutiny of the Bill to 29th November 2010.

19. The Bill contains 37 clauses and one schedule.

20. The Committee launched a call for evidence from 16th June 2010 to 28th July 2010.

21. In total nine written evidence submissions were received. These are included at Appendix 3. Officials from the Consumer Council, the Northern Ireland Authority for Utility Regulation and DETI gave oral evidence to the Committee.

Summary of the Draft Energy Bill as Presented to the Committee for Enterprise, Trade & Investment in the Committee Stage

Part 1 - Gas

Clause 1: Gas – Standards of performance in individual cases

22. Clause 1 concerns standards of performance in individual cases.

Clause 2: Standards of performance in individual cases: Disputes

23. Clause 2 provides that any dispute relating to standards of performance in individual cases shall be determined (on reference to it) by the Utility Regulator. The Department may make regulations concerning the practice and procedures to be followed when the Utility Regulator makes its determination.

Clause 3: Overall standards of performance

24. Clause 3 concerns standards of performance in overall cases. Clause 3 gives the Utility Regulator the power to determine (and arrange for the publication of) standards of overall performance in connection with the provision of gas supply services by gas suppliers and in connection with the activities of gas conveyors.

Clause 4: Procedures for determining standards of performance

25. Clause 4 sets out the procedure for determining and prescribing standards of performance.

Clause 5: Standards for promoting efficient use of gas

26. Clause 5 gives the Utility Regulator the power to determine standards of performance in connection with the promotion of the efficient use of gas by consumers.

Clause 6: Information with respect to levels of performance

27. Clause 6 requires the Utility Regulator to collect information with respect to compensation paid under Clause 1, the level of overall performance achieved by suppliers and conveyors and the level of performance achieved by suppliers in respect of the promotion of the efficient use of gas by consumers.

Clause 7: Information to be given to customers about overall performance

28. Clause 7 requires each gas supplier and gas conveyor to take steps to inform customers of suppliers of the applicable overall standards of performance, and the level of performance achieved by the supplier and conveyor.

Clause 8: Procedures for dealing with complaints

29. Clause 8 places each gas supplier under a duty to establish a procedure for dealing with complaints made by customers (or potential customers) and to publish that procedure (and also to send it free of charge upon request).

Clause 9: Amendments to Energy Order relating to standards

30. Clause 9 of the Bill makes certain amendments to the Energy (Northern Ireland) Order 2003.

Clause 10: Miscellaneous-Damage to Gas Plant

31. Clause 10 establishes a criminal offence in respect of persons who intentionally or negligently damage gas equipment used for conveying, storing or supplying gas; it also allows gas companies to disconnect premises and/or remove gas meters in those circumstances.

Clause 11: Exemption of gas plant from certain processes

32. Clause 11 provides that certain gas plant belonging to licensed gas conveyors and suppliers is exempt from certain enforcement processes.

Clause 12: Deemed contracts for supply in certain cases

33. Clauses 12 and 13 create a deemed contracts regime for gas supplies.

Clause 13: Modification of conditions of gas supply licences in relation to deemed contracts

34. Clause 13 contains provisions that have the effect of enabling the Utility Regulator to modify the conditions of supply licences (both individually and generally) to regulate the terms and conditions of deemed contracts. The Utility Regulator must first obtain the Department's consent, and conduct appropriate consultation.

Clause 14: Powers of entry

35. Clause 14 concerns licensed gas companies' statutory powers to enter premises.

Clause 15: Storage of Gas

36. Clause 15 clarifies the meaning of 'store', for the purpose of the gas storage provisions in the Gas Order.

Clause 16: Appointment of meter examiners

37. Clause 16 relates to the appointment of gas meter examiners. Under Article 22 of the Gas Order, the Utility Regulator is responsible for appointing meter examiners.

Part 2 – Special Administration Regime for Protected Energy Companies

38. Part 2 of the Bill (clauses 17 to 33) creates a special administration regime for gas conveyance and electricity transmission and distribution companies facing actual or threatened insolvency.

Clause 17: Energy Administration Orders

39. Clause 17 provides that a court may make an energy administration order appointing an energy administrator in relation to a protected energy company i.e. a company which holds a gas conveyance licence or an electricity transmission licence.

Clause 18: Objective of an administration order

40. Clause 18 establishes the objective of the energy administrator.

Clause 19: Applications for Energy Administration Orders

41. Clause 19 provides that an application for an energy administration order can only be made by the Department or by the Utility Regulator with the consent of the Department.

Clause 20: Powers of Court

42. Clause 20 sets out the powers of the court in relation to an energy administration order.

Clause 21: Energy Administrators

43. Clause 21 defines the status of the energy administrator.

Clause 22: Conduct of administration, transfer schemes etc

44. Clause 22 gives the Department the power to make regulations for the purpose of applying provisions of the Insolvency Order (with or without modifications) in relation to an energy administration order or an application for such an order.

Clause 23: Restrictions on winding-up orders

45. Clause 23 provides that a winding up order sought by a person other than the Department in respect of a protected energy company cannot be made unless notice has been served on the Department and the Utility Regulator and at least fourteen days have passed since the last of those notices was served.

Clause 24: Restrictions on voluntary winding up

46. Clause 24 prevents a protected energy company voluntarily winding itself up without the permission of the court and prevents the court from granting permission unless notice has been served on the Department and the Utility Regulator and at least fourteen days have elapsed since the service of the last of those notices.

Clause 25: Restrictions on making ordinary administration orders

47. Clause 25 prevents a protected energy company entering ordinary administration if it is already in energy administration, or an energy administration order has been made but is not yet in force.

Clause 26: Restrictions on administrator appointments by creditors etc

48. Clause 26 provides that an administrator cannot be appointed for a company by its secured creditors, directors or the company itself, if an energy administration order in relation to the company is in force, has been made but is not yet in force, or has been applied for.

Clause 27: Restrictions on enforcement of security

49. Clause 27 provides that security over the property of a protected energy company cannot be enforced unless the Department and the Utility Regulator have been notified of the intention to enforce the security and at least 14 days have elapsed since the service of the last of those notices.

Clause 28: Grant and loans

50. Clause 28 enables the Department, with the consent of the Department of Finance and Personnel, to give a grant or loan to a company in energy administration where this appears to the Department to be appropriate to achieve the objective of energy administration.

Clause 29: Indemnities

51. Clause 29 enables the Department, with the consent of the Department of Finance and Personnel, to indemnify persons in respect of liabilities incurred or loss or damage sustained in connection with the exercise of the energy administrator's powers and duties.

Clause 30: Guarantees

52. Clause 30 enables the Department, with consent of the Department of Finance and Personnel, to provide guarantees in relation to a protected energy company in energy administration.

Clause 31: Modification of particular or standard conditions

53. Clauses 31 and 32 enable the Department to modify the conditions of gas and electricity licences. It outlines that such modifications can provide for circumstances where there is a shortfall in the property of a protected energy company, which is or has been in energy administration, for meeting the costs of energy administration.

Clause 32: Licence condition to secure funding of energy administration

54. Clause 32 outlines how the Department can amend the conditions of gas and electricity licences to secure the funding of energy administration.

Clause 33: Interpretation of Part 2

55. Clause 33 defines the terms used in Part 2, and how certain references are to be interpreted.

PART 3 - SUPPLEMENTARY

Clause 34: Regulations

56. Clause 34 of the Bill requires regulations made by the Department and the Utility Regulator under the Bill to be subject to negative resolution (and, in the case of regulations made by the Utility Regulator, such regulations must be laid before the Assembly by the Department). Regulations under the Bill may also make any necessary transitional provisions and amendments.

Clause 35: Interpretation

57. Clause 35 deals with interpretation of the bill.

Clause 36: Commencement

58. Clause 36 deals commencement of the bill.

Clause 37: Short Title

59. Clause 37 deals with the title of the bill.

Schedule: Energy Transfer Schemes

60. The Schedule covers the content and effect of transfer schemes which can be made as described in Clause 18(3) i.e. transfers to another company or companies as a going concern of so much of the protected energy company's assets as are necessary to ensure that the objective of the energy administration is met.

Summary of Consideration

Clause 1: Standards of performance in individual cases

61. The Utility Regulator, responding to a query from the Committee during pre-legislative scrutiny, stated that the proposed legislative changes bring gas into line with existing performance standards for electricity.

62. The Consumer Council, responding to a query from the Committee during pre-legislative scrutiny stated that, in its view, compensation should be paid to consumers where guaranteed standards are not met. The organisation believes that any compensation payments made for failure to deliver adequate standards and service should come from the profits of the energy companies and not from a company's customer base.

63. In response, the Department stated that Clause 1, Subsection (2) of the draft Bill makes provision for a gas supplier or conveyer to pay a prescribed compensation to consumers where the relevant standard of performance has not been met.

64. The Department will work with the Consumer Council and the Utility Regulator in relation to the outworking of the guaranteed standards of performance legislation for the natural gas industry. All proposals, including those relating to compensation payments, will be subject to public consultation.

65. In line with his statutory duties as set out in the Energy (NI) Order 2008, the Utility Regulator has already initiated work in this area and, on 28 May 2010, published a report outlining the views of NI customers on issues relating to guaranteed standards of performance across the natural gas, electricity and water sectors.

66. While firm proposals on the way forward have yet to be developed, the Department expects that guaranteed standards will operate in the same way in the gas sector as the electricity regime. The Regulator has advised that, in relation to electricity standards of performance, there is no regulatory allowance within electricity price controls to cover guaranteed standards. Electricity companies are expected to fund this.

67. The Phoenix Group believe that the procedures for determining standards in individual cases should mirror those for determining overall standards of performance in line with legislation for electricity in Northern Ireland and gas in Great Britain.

68. The Department has noted this suggestion. The development of both overall and individual standards of performance will be taken forward by the Utility Regulator, in liaison with the Department, as part of the outworking of the guaranteed standards of performance legislation and will be subject to public consultation.

69. In giving oral evidence to the Committee, the Consumer Council stated that the principle of guaranteed standards of service is to ensure that consumers receive compensation for poor standards of service rather than to provide incentives to the company to deliver high standards. They stated that the Utility Regulator has a potential conflict of interest because it must promote

the gas industry while trying to provide consumer protection. The Consumer Council believes that it is time to review that dual role.

70. The Utility Regulator's representative agreed in oral evidence that the Utility Regulator had roles in both protecting customers and promoting the gas industry. He stated that they see the promotion of the gas industry as being consistent with ensuring that customers get a good service. He stated that in the electricity industry compensation payments come out of company profits. He agreed that under this Bill, the same legislative provisions would apply to the gas industry as currently apply to the electricity industry.

71. Following consideration of the evidence the Committee was content with Clause 1 as drafted.

Clause 3: Overall standards of performance

72. The Phoenix Group stated that its current standards of performance set out in licences of regulated gas utilities ensure that gas companies remain focussed on delivering all aspects of customer service. The Group does not believe that implementing guaranteed standards of performance will improve the level of customer service offered to its customers.

73. The Department responded that the legislative provisions, which will allow the Department and the Utility Regulator to determine standards of performance in connection with the activities of licensed gas suppliers and those who are licensed to convey gas, are deemed necessary to bring the natural gas industry into line with provisions already in place for the electricity industry in Northern Ireland. The Department believes that guaranteed standards of performance for the gas industry will provide consumers with specific, measurable, achievable, reliable and timely standards to gauge the level of service being provided by different gas companies. This will help to create a level playing field for customer standards and allow for easier comparison of competitive offers.

74. Phoenix Group also stated that there will be cost implications associated with introducing guaranteed standards of performance and that these will have to be considered by the Utility Regulator as part of each utility's price control review.

75. The Department responded that it will work with the Utility Regulator on the outworking of the guaranteed standards of performance legislation for the natural gas industry which is expected to operate in the same way as the established regime for the electricity industry. In relation to electricity standards of performance, there is no regulatory allowance within electricity price controls to cover guaranteed standards. Electricity companies are expected to fund this. Proposals for guaranteed standards in relation to the natural gas industry will, however, will be subject to public consultation before any final decisions are made.

76. Phoenix Group believes that consideration should be given to implementing guaranteed standards of service across all Northern Ireland energy companies including the oil industry.

77. The Department stated that as the oil industry is not regulated and falls outside the remit of the Department and the Utility Regulator, DETI has no plans to introduce legislation in relation to the oil industry in Northern Ireland.

78. If introduced, Phoenix Group would like to see guaranteed standards implemented on a phased approach. The Department noted this suggestion and stated that arrangements relating to the implementation of guaranteed standards of performance will be developed by the Utility Regulator, in liaison with the Department, as part of the outworking of the guaranteed standards of performance legislation and will be subject to public consultation.

79. Following consideration of the evidence the Committee was content with Clause 3 as drafted.

Clause 9: Amendments to Energy Order relating to standards

80. The Utility Regulator, responding to a query from the Committee during pre-legislative scrutiny stated that his office is currently considering the question of recovery of money paid to consumers as a result of failed service. Proposals will be subjected to public consultation.

81. Following consideration of the evidence the Committee was content with Clause 9 as drafted.

Clause 10: Damage to gas plant

82. In giving oral evidence to the Committee the Consumer Council stated that they are concerned about the term "culpable negligence" in the Bill, stating that it implies that a person would be guilty of that offence if they did nothing to stop another damaging their meter, and would therefore, be negligent as a result of someone else's actions. They feel it is quite a broad term under which to criminalise somebody. They stated that it would be down to a judge to determine what "culpable negligence" means. They felt it is too broad a term to be included in the Bill and suggested that it is amended.

83. The Department informed the Committee that it has liaised with the Office of Legislative Counsel (OLC) regarding this matter who has advised that "culpable negligence" denotes a high degree of negligence which merits criminal sanctions and is more commonly referred to as "gross negligence". OLC has advised that the Clause could be amended to be restricted to intentional damage only. However, that would mean that the gas provisions would be out of line with electricity legislation. OLC has also noted that water legislation goes even further and penalises merely negligent damage to water fittings. The Department would therefore consider it desirable to retain Clause 10(1) as originally drafted to keep the gas provisions in line with equivalent Northern Ireland electricity legislation.

84. Following consideration of this evidence, members still had some concerns and agreed to write to the Consumer Council to seek its views on the Department's response. The Consumer Council stated that in its view the term "culpable negligence":

"requires clarification on how it will be applied in practice to justify its inclusion in the Bill. Without clarification, the term appears to us to be too wide in scope. This is potentially dangerous, as it could lead to consumers whose meter is damaged without their knowledge being convicted of a criminal offence."

85. DETI Energy Division responded that it had sought further advice from the OLC on the issue of "culpable negligence" and was advised that:

"There is no precise legal definition. "Culpable negligence" denotes a high degree of negligence which merits criminal sanctions. It is perhaps more commonly referred to as "gross negligence"."

86. In giving further oral evidence to the Committee, DETI Energy Division officials were unable to provide any additional clarification on how the term would be applied in practice. In the absence of either a clear definition or clarity on how the term would be applied in practice, concerns remained in relation to the potential for an innocent individual to be criminalised for failing to prevent the actions of another. The Committee divided on the issue during formal clause-by-clause scrutiny of the Bill and subsequently agreed to recommend to the Assembly that the term "culpable negligence" be removed from Clause 10(1) of the Bill.

87. In giving oral evidence to the Committee, the Utility Regulator's representative agreed with the Committee that it may be helpful to add the word "repair" so that Clause 10(4) reads, "A meter removed under subsection (3) shall be kept safely by the gas conveyor until the Authority authorises its destruction, disposal or repair."

88. The Department stated that Clause 10(4) was drafted to reflect equivalent provisions in paragraph 6(4) in Schedule 6 of the Electricity (Northern Ireland) Order 1992. However, having consulted with the natural gas industry regarding this amendment the Department has been advised that the industry would be content with the revised wording and accept that, in certain circumstances, it would be feasible for meters to be repaired rather than disposed of or destroyed. The only reason that gas companies would not repair a meter would be where the cost of repair (including delivery costs) would exceed the cost of a new replacement meter. OLC has agreed that this minor amendment could be made to the Bill without adversely impacting on any other aspect of the proposed legislation.

89. In light of a query raised by the Committee in relation to Clause 14, the Department re-examined Clause 10 to ensure that its provisions for damage to gas plant fully encompass meter tampering. Its conclusion was that it would be desirable to amend Clause 10(1) to specifically refer to tampering with gas meters in order to avoid any doubt about whether tampering/interfering with a meter necessarily amounts to damaging it. There are already equivalent provisions specifically making it an offence to tamper with meters under the Electricity (Northern Ireland) Order 1992, and under the Gas Act 1986 and the Electricity Act 1989 in GB. OLC agreed that this amendment can be made without negatively impacting on any other part of the proposed Energy Bill.

90. The Committee was content with Clause 10 subject to the amendment to Clause 10(1) as recommended by the Committee and subject to the following amendments as agreed by the Department:

Clause 10, Page 6, line 40, leave out from "negligence" in line 40 to "conveyor" in line 41 and insert:—

"(a) damages or allows to be damaged any gas plant provided by a gas conveyor;

(b) alters the index of any meter used for measuring the quantity of gas conveyed or supplied by a gas conveyor or a gas supplier; or

(c) prevents any such meter from duly registering the quantity of gas conveyed or supplied."

Clause 10, page 7, line 3, leave out "subsection (1)" and insert "subsection (1)(a)"

Clause 10, page 7, line 14, leave out "or disposal" and insert ", disposal or repair"

Clause 12: Deemed contracts for supply in certain cases

91. In response to a query from the Committee during pre-legislative scrutiny, the Utility Regulator responded that the proposed changes are designed to bring the gas legislation in line with the legislation that already exists for electricity. It is designed to ensure continuity of supply for customers where a signed contract does not exist between a supplier and a customer. It is more an issue of whether a physical signed contract exists, rather than whether customers on deemed contracts pay more. The exact nature of the contract, whether it is a signed physical contract or a deemed contract, will have no bearing on what the customer will pay. In giving oral evidence to the Committee, the Utility Regulator's representative agreed that under this Bill, the

same legislative provisions would apply to the gas industry as now apply to the electricity industry.

92. During DETI's public consultation, the Consumer Council stated that customers on deemed contracts should be charged the published tariff, must be free to shop around and should be provided with a copy of the deemed contract (which should also be available on the supplier's website). 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. In response to the Committee's call for evidence, the Consumer Council stated that it was content with the Department's response to the issues it raised.

93. In response to the Consumer Council, the Department stated that the proposed provisions will place a duty on suppliers to make, and revise when appropriate, a scheme for determining terms and conditions for deemed contracts. The terms and conditions made by suppliers must be published in advance and sent to the Utility Regulator and the Consumer Council for Northern Ireland.

94. Further, the proposed regime will provide the Utility Regulator with the power to make licence modifications for the purposes of the deemed contracts regime. Such licence conditions already exist in electricity supply licences, and can provide additional protection to customers. For example, in electricity, they require the licensee to take all reasonable steps to ensure that the terms of deemed contracts are not unduly onerous.

95. Phoenix Natural Gas Ltd informed the Committee that it welcomes the proposal to replicate the deemed contract provisions for the Northern Ireland electricity industry to the Northern Ireland natural gas industry.

96. Following consideration of the evidence the Committee was content with Clause 12 as drafted.

Clause 13: Modification of conditions of gas supply licences in relation to deemed contracts

97. Phoenix Supply Ltd informed the Committee that it accepts Clause 13 on the basis that licence modifications are by agreement with the holder of the licence similar to the provisions in the Gas Act and the Electricity Order.

98. In providing further background to the Committee, the Department stated that the Energy Bill introduces provisions for a deemed contracts regime whereby a gas supply contract will be 'deemed' to have arisen between the supplier and the customer in certain circumstances. Under these provisions, a gas supplier must make a scheme for determining the terms and conditions which are to be incorporated in a deemed contract. As the terms and conditions of a deemed contract have not been expressly agreed between suppliers and customers, they will be subject to regulation.

99. Clause 13 of the draft Bill states that the Utility Regulator must consult with both the holder of any licence being modified, and any other appropriate persons, before making a modification to the conditions of supply licences in relation to deemed contracts. It does not require the Utility Regulator to reach agreement with the holder of the licence.

100. The Department stated its position to be that deemed contracts regime is based on equivalent provisions in the Electricity Order. In the case of the electricity supply industry, there are also supply licence conditions that further regulate the content of deemed contracts. For

example, the relevant licence condition requires the licensee "to take reasonable steps to ensure that the terms of each of its deemed contracts are not unduly onerous". Similar licence conditions exist in Great Britain in connection with deemed contracts.

101. The Department considers that similar licence conditions are also necessary for NI gas supply licences. Broadly speaking, gas supply licences could be modified in three different ways:

(a) Through the existing licence modification process in the Gas Order;

(b) Creating a special enabling power in legislation; or

(c) Directly by legislation (i.e. including the new licence condition or amendment within legislation).

102. Approach (a) would mean the Department relying on the existing licence modification process set out in Article 14 (and 15) of the Gas Order. This requires licensees' consent to be obtained before modifications can be made, failing which a reference to the Competition Commission is provided for. Neither of these scenarios within approach (a) is desirable because of the increased risks they pose to the timely and successful introduction of the Department's policy. For example, the consent thresholds under Article 14 of the Gas Order would at present require only two non-consenting licensees to block proposed licence amendments (this could present a particular difficulty in Northern Ireland where there are far fewer licence holders than in GB). A reference to the Competition Commission would have significant time and cost implications.

103. Clause 13 reflects approach (b) above. Clause 13 contains provisions that have the effect of enabling the Utility Regulator to modify the conditions of gas supply licences (both individually and generally) to regulate the terms and conditions of deemed contracts.

104. Appropriate statutory protections are provided for within Clause 13. For example, the power is time limited, the Utility Regulator must first obtain the Department's consent and it must also conduct appropriate consultation.

105. The approach in Clause 13 has already been successfully used in GB and NI energy legislation. For example, in Article 32(1) of the Energy Order 2003 (which allows the Department to determine new standard conditions for gas conveyance licences); Article 11 of the Gas Order (which gives the Department the power to determine entirely new standard licence conditions for gas licences) and section 168 of the Energy Act 2004 (which gives the Secretary of State the power to make licence modifications in relation to GB's special energy administration regime).

106. However, regardless of the approach taken in other legislation, in the Department's view, Clause 13 represents the best approach to implement the Department's policy in this area.

107. The Department went on to state that, as Phoenix Supply Ltd does not favour approach (c), the Department would not intend to address those policy considerations in further detail here.

108. Following consideration of the evidence the Committee was content with Clause 13 as drafted.

Clause 14: Powers of entry

109. In response to a query from the Committee during pre-legislative scrutiny the Consumer Council responded that gas licence holders should have the same access rights as electricity

licence holders to enter premises if they suspect meter or fittings have been tampered with. They stated that, in carrying out this act, natural gas licence holders must act in a reasonable and fair manner and consumers should not be left without a supply of gas until such times as it has been proven that meter tampering has occurred.

110. The Department responded that the provisions regarding power of entry to property by gas companies is in line with provisions within the Electricity (NI) Order 1992 for the electricity industry in Northern Ireland.

111. In order to protect individuals from 'unwarranted intrusion', a gas company wishing to enter premises must obtain the consent of the occupier of the premises. If occupier consent is not obtained, then the gas company must be able to demonstrate 'reasonable suspicion' and thereby satisfy a Justice of the Peace that there are grounds to warrant entry to a customer's premises.

112. If, upon inspecting a meter, a gas company suspects that a meter has been tampered with, the meter will be removed for diagnostic testing, where applicable, and examination. Unless there has been a previous history of meter tampering, it will be replaced with a pre-payment meter with a debt recovery function to ensure that the customer's gas supply is not interrupted. This arrangement will apply to all consumers, including 'vulnerable' consumers.

113. Advice NI cautioned that the outworking of the 'power of entry' aspect of the proposed legislation may bring to light energy debts. As such, where a household is deemed to be vulnerable, Advice NI believes that energy suppliers should have appropriate policies in terms of maintaining supply and recouping monies owed.

114. The Department has consulted with the two main domestic gas suppliers in Northern Ireland in relation to the issue of energy debts. As outlined above, under the draft Energy Bill, gas companies must be able to demonstrate 'reasonable suspicion' of meter tampering and thereby satisfy a Justice of the Peace, if necessary, that there are grounds to warrant entry to a customer's premises.

115. If a meter is removed for diagnostic testing and examination, it will be replaced with a pre-payment meter with a debt recovery function to ensure an uninterrupted supply of gas to the premises in question.

116. If the results of further testing indicate that the meter has been tampered with, the gas company will contact the customer with the estimated costs of gas used from the date of tampering to the date of removal of the meter for diagnostic testing. Customers will also be advised of the costs incurred by the gas company in relation to the damage to the meter. The customer will be required to either pay the restitution in full or agree to a suitable payment arrangement.

117. The Department believes that the legal implications for gas companies, and the fact that some of these companies already have an effective debt management process in place, should assure consumers that bringing powers of entry into line with other NI and GB utilities will not provide incentives to a gas company to manipulate the system to deal with consumers in debt.

118. The Department also notes that the conditions of gas supply licences require that suppliers shall not cut off the supply of gas to a pensioner's premises during any winter period unless unavoidable due to a network emergency.

119. In giving oral evidence to the Committee, the Consumer Council stated that safeguards should be in place to ensure that the gas companies, as is the case with electricity companies, have the right level of suspicion before they can enter a property. They stated that guidance

needs to be given to suppliers and to Justices of the Peace. They stated that NIE has guidance and agreed procedures and that they are requesting the same for gas companies. Gas companies should supply consumers until it can be proven that gas meter tampering has occurred. They stated that meter tampering must be dealt with along with issues around the danger to the community.

120. The phrase 'reasonable suspicion' does not appear in Clause 14 of the Bill and neither is a Justice of the Peace referred to in the Bill.

121. In giving oral evidence to the Committee, the Utility Regulator's representative agreed the phrase "reasonable suspicion of meter tampering" does not appear in the Bill but that the current draft allows entry on the basis of potential damage to the meter. He agreed that a potential gap exists whereby, if an authority suspects that a meter has been tampered with, but does not suspect danger to life or property, it does not have power of entry. He stated that this Clause intends to cover that. He agreed that this should be reviewed.

122. He stated that the reference to the Justice of the Peace is in Subsection 8 of Clause 14 of the Gas Order. He stated that, although there is no code of practice, potentially the safeguards in place are the Justices of the Peace.

123. He also confirmed that under this Bill, the same legislative provisions would apply to the gas industry as now apply to the electricity industry.

124. Committee members had further concerns in relation to the provisions of the Bill applying in a similar way to the gas industry as currently apply to the electricity industry. Members felt that as the potential danger to life and property is much greater were a gas meter to be tampered with than would be the case with an electricity meter, the powers of entry should be such that an occupier should not have the opportunity to deny access to premises in order to attempt to "fix" an illegal practice before an installation can be inspected by a gas company. The Committee asked the Department to determine whether existing legislation provided for a gas company to gain access to premises where necessary, without forewarning the occupier. The Department responded that provision in the Gas (NI) Order 1996 which states that, when a gas company applies for a warrant to enter premises, the JP must be satisfied that either "the consent of the occupier has been refused or seeking that consent would defeat the objective of entry." OLC has confirmed that this existing provision provides that a gas company does not need to inform the occupier if to do so would defeat the purpose of entry. In such a case the gas company can seek to obtain the warrant under Clause 14(1)(a) and enter the premises without any advance notice to the occupier.

125. In relation to the Committee's suggestion to explicitly mention "meter tampering" in Clause 14 of the Bill, the Department responded that Clause 14(1) of the Energy Bill provides a general right to enter premises to inspect the gas system or fittings. The Department has sought legal advice as to whether it is necessary for this Clause to specify the exact purpose of such an inspection, e.g. to check for meter tampering. Advice received has suggested that this is not necessary because the current wording gives rise to a power of entry to carry out inspections which is not limited by reference to any particular purpose for the inspection.

126. Clause 14(2) of the Bill confers a right of entry where the offence of damage to gas plant has been committed as defined in Clause 10. On this basis, the Department feels that Clause 14 has adequate provisions to cover meter tampering and does not require a specific reference to be added.

127. The Department has also considered the Committee's suggestion as to whether it would be appropriate to include the term "reasonable suspicion" in Clause 14 of the Bill in relation to the

circumstances whereby gas companies might utilise powers of entry in relation to suspected meter tampering.

128. Clause 14(8) makes reference to paragraphs 5 to 8 of Schedule 5 to the Gas (Northern Ireland) Order 1996 (attached at Annex 3) which establishes the procedures to be followed when entry to premises is required. These specify that (apart from emergency situations where there is danger to life or property) a power of entry shall not be exercisable except by consent from the occupier, or under the authority of a warrant whereby a Justice of the Peace is satisfied that admission to the premises is "reasonably required". OLC has confirmed that these paragraphs in Schedule 5 are drafted in a sufficiently general way to apply to the Energy Bill and that it is not therefore necessary to incorporate the term "reasonable suspicion" in Clause 14. The Department therefore feels that the current legislative provisions in the Energy Bill and Gas (Northern Ireland) Order 1996 are sufficient to deal with reasonable suspicion with regards to meter tampering.

129. Following consideration of the evidence the Committee was content with Clause 14 as drafted.

Clause 16: Appointment of meter examiners

130. The Consumer Council stated in response to public consultation by DETI that it believes that the responsibility of meter testing should not reside with the gas industry but with an independent body. The Department responded that one of the existing requirements under the Gas Order is that only competent and impartial persons should be appointed as meter examiners. The Department's view is that this requirement should not be changed. In response to the Committee's call for evidence, the Consumer Council stated that it was content with the Department's response to the issues it raised.

131. In responding to a query from the Committee the Department stated that it is likely that responsibility for meter testing will be outsourced by the Utility Regulator to an organisation such as the National Measurement Office, which operates in GB.

132. Following consideration of the evidence the Committee was content with Clause 16 as drafted.

Clause 17: Energy administration orders

133. The Utility Regulator informed the Committee that the proposed conditions will ultimately help to ensure the continuity of gas and electricity supply by putting energy consumers' interests above those of creditors and shareholders if a gas conveyance licence holder or an electricity transmission licence holder becomes insolvent.

134. Following consideration of the evidence the Committee was content with Clause 17 as drafted.

Clause 24: Restrictions on voluntary winding up

135. Northern Ireland Electricity PLC advised the Committee that the reference to "leave" in Clause 24(4) should be changed to "permission". The application referred to is, it states, for "permission" and this would also accord with the wording used in Section 162(4) of the Energy Act 2004.

136. The Department stated that the suggested amendment involves changing the reference to "an application for leave" to "an application for permission" in respect of voluntary winding up. The Department consulted and received advice from the Office of Legislative Counsel who has agreed that this minor technical amendment is warranted.

137. The Committee was content with Clause 24 subject to the following amendment as agreed by the Department:

Clause 24, page 16, line 8, leave out "leave" and insert "permission"

Clause 35: Interpretation

138. The Department informed the Committee that it intends to bring a minor drafting amendment to Clause 35 at consideration stage. The amendment is required in order to accurately reflect the name of the Northern Ireland Authority for Utility Regulation.

139. The Committee was content with Clause 35 subject to the following amendment as agreed by the Department:

Clause 35, page 23, line 40, leave out "Energy" and insert "Utility"

Committee consideration of Other Issues

Inclusion of provisions for a Renewable Heat Incentive in the Bill

140. On 17th June 2010, the ETI Committee discussed a briefing paper, provided by DETI, on EU Energy Policy and, as a result, members agreed to explore with the Department the possibility of introducing a renewable heat incentive (RHI) in Northern Ireland through amendments to the Energy Bill.

141. The Department responded that, following the Department of Energy and Climate Change (DECC) decision to incentivise renewable heat in GB, DETI has recently completed a study to determine the most appropriate method of developing and supporting the local renewable heat market and indications are that a targeted incentive for domestic and commercial customers, similar to the GB model, could be appropriate. However further economic analysis will be required.

142. The Department stated that inclusion of provisions for RHI in primary legislation would bring Northern Ireland into line with the rest of the UK following the introduction of an amendment incorporating RHI into the 2008 Energy Bill in GB. Further secondary legislation will also be needed in both GB and NI to implement a renewable heat incentive.

143. The Department informed the Committee that it has investigated the possibility of introducing RHI through amendments to the Energy Bill with the Office of Legislative Counsel (OLC). As the Bill is principally about the natural gas industry, with a very limited application to the electricity sector, a provision for renewable energy is deemed to be outside the scope of the Bill.

144. The Department further asked the Committee to note that there is a statutory duty on the Department to consult upon new policy issues. The inclusion of a new and significant provision, such as RHI, in the Energy Bill would require a policy consultation exercise to be undertaken. In addition, the equivalent GB legislation on the subject of RHI is substantial, and drafting the

required provisions for NI legislation would require additional time and resources. Therefore, any attempt to include provisions on RHI in the Energy Bill could considerably delay the progress of the Bill and could potentially mean that the Bill, if not enacted within this Assembly, would fall.

145. The Department has stated that it will be necessary for a separate piece of primary legislation to be introduced in order to provide enabling powers for a renewable heat incentive, along with other miscellaneous provisions, which could go through the Assembly legislative process next year.

146. The Committee was content with the Department's response and will closely follow progress with the development of a renewable heat incentive.

Clause by Clause Scrutiny of the Bill

Clause 1: Standards of performance in individual cases

Clause 2: Standards of performance in individual cases: Disputes

Clause 3: Overall standards of performance

Clause 4: Procedures for determining standards of performance

Clause 5: Standards for promoting efficient use of gas

Clause 6: Information with respect to levels of performance

Clause 7: Information to be given to customers about overall performance

Clause 8: Procedures for dealing with complaints

Clause 9: Amendments to Energy Order relating to standards

147. The Committee for Enterprise, Trade & Investment is content with clauses 1 to 9 as drafted.

Clause 10: Damage to gas plant

148. The Committee for Enterprise Trade & Investment recommends that Clause 10 be amended at consideration stage as follows:

Clause 10, Page 6, line 40, leave out "or by culpable negligence"

149. The Committee for Enterprise, Trade & Investment also agreed to recommend that the following amendments should be made as agreed by the Department:

Clause 10, Page 6, line 40, leave out from "negligence" in line 40 to "conveyor" in line 41 and insert:—

"(a) damages or allows to be damaged any gas plant provided by a gas conveyor;

(b) alters the index of any meter used for measuring the quantity of gas conveyed or supplied by a gas conveyor or a gas supplier; or

(c) prevents any such meter from duly registering the quantity of gas conveyed or supplied."

Clause 10, page 7, line 3, leave out "subsection (1)" and insert "subsection (1)(a)"

Clause 10, page 7, line 14, leave out "or disposal" and insert ", disposal or repair".

Clause 11: Exemption of gas plant from certain processes

Clause 12: Deemed contracts for supply in certain cases

Clause 13: Modification of conditions of gas supply licences in relation to deemed contracts

Clause 14: Powers of entry

Clause 15: Storage of gas

Clause 16: Appointment of meter examiners

Clause 17: Energy Administration orders

Clause 18: Objective of an energy administration

Clause 19: Applications for energy administration orders

Clause 20: Powers of court

Clause 21: Energy administrators

Clause 22: Conduct of administration, transfer schemes etc

Clause 23: Restrictions on winding-up orders

150. The Committee for Enterprise, Trade & Investment is content with clauses 11 to 23 as drafted.

Clause 24: Restrictions on voluntary winding up

151. The Committee for Enterprise, Trade & Investment is content with Clause 24 subject to the following amendment as agreed by the Department:

Clause 24, page 16, line 8, leave out "leave" and insert "permission".

Clause 25: Restrictions on making ordinary administration orders

Clause 26: Restrictions on administrator appointments by creditors etc

Clause 27: Restrictions on enforcement of security

Clause 28: Grant and loans

Clause 29: Indemnities

Clause 30: Guarantees

Clause 31: Modification of particular or standard conditions

Clause 32: Licence condition to secure funding of energy administration

Clause 33: Interpretation of Part 2

Clause 34: Regulations

152. The Committee for Enterprise, Trade & Investment is content with clauses 25 to 34 as drafted.

Clause 35: Interpretation

153. The Committee for Enterprise, Trade & Investment is content with Clause 35 subject to the following amendments as agreed by the Department:

Clause 35, page 23, line 40, leave out "Energy" and insert "Utility".

Clause 36: Commencement

Clause 37: Short title

The Committee for Enterprise, Trade & Investment is content with clauses 36 to 37 as drafted.

Schedule:

The Committee for Enterprise, Trade & Investment is content with the schedule as drafted.

Long Title

The Committee for Enterprise, Trade & Investment is content with the long title as drafted.

Appendix 1

Minutes of Proceedings
Thursday, 28 May 2009
Room 21, Parliament Buildings

Present: Mr Mark Durkan MP (Chairperson)
Dr Alasdair McDonnell MP
Mr Leslie Cree
Mr Alan McFarland
Mr Gerry McHugh
Mr Paul Butler
Mr Sean Neeson

In Attendance: Mr Jim McManus (Assembly Clerk)
Mr Paul Connolly (Assistant Assembly Clerk)
Ms Sohui Yim (Assistant Assembly Clerk)
Mr Jim Nulty (Clerical Supervisor)
Mr Diarmaid Elder (Clerical Officer)

Apologies: Mr Simon Hamilton
Mr Robin Newton
Ms Jennifer McCann (Deputy Chairperson)
Mr Jim Wells

10.35 a.m. The meeting opened in public session.

1. Correspondence

The Committee noted the following correspondence.

- Letter from the Department regarding the Natural Gas Industry in Northern Ireland.

Agreed: To receive oral briefing from Energy Division officials after recess.

1.10pm The Chairperson adjourned the meeting.

[Extract]

Thursday, 14 January 2010
Room 144, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Ms Jennifer McCann
Mr Gregory Campbell MP
Mr Stephen Moutray
Mr Leslie Cree
Mr Alan McFarland
Mr Sean Neeson

Mr Gerry McHugh
Dr Alasdair McDonnell MP

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Sohui Yim (Assistant Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)

Apologies: Mr David Simpson MP

10.31am The meeting began in public session.

7. Gas (Northern Ireland) Bill –Outcome of consultation –Written Briefing

Members discussed the written briefing.

Agreed: Request the full responses to the consultation prior to the Committee stage of the Bill.

Agreed: To invite key stakeholders to provide written briefings on the Bill when the Committee considers the Bill.

Agreed: To raise the relevant issues with the Utility Regulator during the Committee stage of the Bill.

1.30pm The Chairperson adjourned the meeting.

[Extract]

Thursday, 11 March 2010 Room 30, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Dr Alasdair McDonnell MP
Mr Alan McFarland
Mr Leslie Cree
Mr Sean Neeson
Ms Jennifer McCann

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Sohui Yim (Assistant Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)

Apologies: Mr Stephen Moutray
Mr David Simpson MP
Mr Gregory Campbell MP
Mr Gerry McHugh

10.34 am The meeting began in public session.

9. Energy Bill –Written Briefing

Agreed: To defer this item until the 18 March meeting.

1.27pm The Chairperson adjourned the meeting.

[Extract]

Thursday, 18 March 2010 Room 30, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Dr Alasdair McDonnell MP
Mr Alan McFarland
Mr Leslie Cree
Mr Stephen Moutray
Mr Sean Neeson
Mr Gerry McHugh

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Sohui Yim (Assistant Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)

Apologies: Mr Gregory Campbell MP
Mr David Simpson MP
Ms Jennifer McCann

10.23am The meeting began in public session.

8. Energy Bill – Written Briefing

Members discussed the written briefing.

Agreed: To consult with the relevant bodies on the issues raised during the Committee stage of the Bill.

Agreed: To write to the Utility Regulator to seek his views on the consultation.

12.31pm The Chairperson adjourned the meeting.

[Extract]

Monday, 29 March 2010 Room 30, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Mr Alan McFarland

Mr Leslie Cree
Mr Gerry McHugh
Mr Gregory Campbell MP
Dr Alasdair McDonnell MP
Ms Jennifer McCann

In Attendance: Mr Jim McManus (Assembly Clerk)
Mr Jim Nulty (Clerical Supervisor)
Mr Jonathan Lamont (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)

Apologies: Mr David Simpson MP
Mr Stephen Moutray
Mr Sean Neeson

4. Energy Bill – Oral briefing

10.48am Officials joined the meeting.

10.48am Alasdair McDonnell joined the meeting.

Members received an oral briefing from Jenny Pyper, Head of DETI Energy Division, Fred Frazer and Susan Stewart, DETI Energy Division. Main issues discussed included powers of access to premises for gas companies; Gas Meter Stamping and Testing; and Special Administration Regime for Electricity and Gas.

Leslie Cree declared an interest in relation to involvement with gas companies.

11.06am Alasdair McDonnell left the meeting.

11.31am Officials left the meeting.

Agreed: The Department to provide figures from companies regarding meter tampering.

Agreed: The Department to seek DSO views with regard to previous Gas Legislation.

12.34pm The Chairperson adjourned the meeting.

[Extract]

Thursday, 22 April 2010 Room 30, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Ms Jennifer McCann
Mr Daithí McKay
Dr Alasdair McDonnell MP
Mr Leslie Cree
Mr Gerry McHugh

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Sohui Yim (Assistant Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)

Apologies: Mr Stephen Moutray
Mr Gregory Campbell MP
Mr David Simpson MP
Mr Sean Neeson

10.35am The meeting began in public session.

3. Matters Arising

Members discussed a Departmental briefing paper regarding the Energy Bill.

Agreed: To consider the briefing paper during the Committee stage of the Bill.

12.29pm The Chairperson adjourned the meeting.

[Extract]

Thursday, 13 May 2010 Room 30, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Ms Jennifer McCann
Mr Stephen Moutray
Mr Gregory Campbell MP
Mr David Simpson MP
Dr Alasdair McDonnell MP
Mr Sean Neeson
Mr Leslie Cree
Mr Gerry McHugh

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Sohui Yim (Assistant Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)

Apologies: Mr Daithí McKay

10.04am The meeting began in public session.

3. Matters Arising

Members discussed a letter from the NI Authority for Utility Regulation (NIAUR) regarding clarification on its views on the Energy Bill.

Agreed: To consider the letter when the Energy Bill is at Committee stage.

12.49pm The Chairperson adjourned the meeting.

[Extract]

Thursday, 3 June 2010 Room 30, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Ms Jennifer McCann
Mr Daithí McKay
Mr Gregory Campbell MP
Mr Sean Neeson
Mr Gerry McHugh

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Sohui Yim (Assistant Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)

Apologies: Mr Stephen Moutray
Dr Alasdair McDonnell MP
Mr Leslie Cree

10.49am The meeting began in closed session.

4. Matters arising from 20 May meeting

Members noted that the Energy Bill was introduced to the Assembly on Tuesday, 1 June.

Agreed: Content with the principles of the Energy Bill and to welcome the Energy Bill.

12.40pm The Chairperson adjourned the meeting.

[Extract]

Thursday, 10 June 2010 Room 30, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Dr Alasdair McDonnell MP
Mr Gregory Campbell MP
Mr Stephen Moutray
Mr Leslie Cree
Mr Sean Neeson
Mr Gerry McHugh

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Sohui Yim (Assistant Clerk)

Mr Jim Nulty (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)

Apologies: Ms Jennifer McCann

10.33am The meeting began in closed session.

4. Matters arising from 3 June 2010 meeting

Members discussed a list of stakeholders for the Committee to write to for comments/views on the Energy Bill and a draft public notice for the Bill.

Agreed: To write to the stakeholders on the list.

Agreed: Content with public notice and the 6-week consultation period for the notice.

11.20am The Chairperson adjourned the meeting.

[Extract]

Thursday, 17 June 2010 Room 30, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Mr Daithí McKay
Dr Alasdair McDonnell MP
Mr Gregory Campbell MP
Mr Stephen Moutray
Mr Leslie Cree
Mr Sean Neeson

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Sohui Yim (Assistant Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)

Apologies: Ms Jennifer McCann

10.39am The meeting began in public session.

3. Matters arising from 10 June meeting

Members discussed a briefing from the Department regarding EU Energy Policy.

Agreed: To explore with the Department the possibility of introducing a renewable heat incentive (RHI) through amendments to the Energy Bill, as the work on RHI was to be complete in April.

12.25pm The Chairperson adjourned the meeting.

[Extract]

Thursday, 1 July 2010

Room 144, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Mr Gregory Campbell MP
Mr Paul Frew
Mr Sean Neeson
Mr Gerry McHugh

In Attendance: Mr Jim McManus (Assembly Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)
Ms Alison Ferguson (Clerical Officer)

Apologies: Mr Paul Butler (Deputy Chairperson)
Ms Jennifer McCann
Mr Leslie Cree

10.37am The meeting began in public session.

10. Forward Work Programme.

Members discussed the Forward Work Programme.

Agreed: In relation to the Energy Bill and the Tourism Bill, Members agreed that the Committee Office should collate all written evidence and forward the necessary issues relating to clauses, to the Department for a response.

12.08pm The Chairperson adjourned the meeting.

[Extract]

Thursday, 9 September 2010

Room 30, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Ms Jennifer McCann
Mr Daithí McKay
Mr Gregory Campbell MP
Mr Paul Frew
Mr Gerry McHugh
Mr Leslie Cree

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Sohui Yim (Assistant Clerk)
Ms Paula Best (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)

Apologies: Mr Paul Butler (Deputy Chairperson)
Dr Alasdair McDonnell
Mr Sean Neeson

10.33am The meeting began in closed session.

3. Energy Bill: Oral briefing

Members received an oral briefing from Fred Frazer, Irene McAllister and Susan Stewart, DETI Energy Markets. Key issue discussed was the Department's response to issues arising from the Committee's consultation on the Energy Bill.

Agreed: To consider the Energy Bill again at next week's meeting.

DETI officials remained at the table to discuss the next agenda item.

12. Any other business

Members discussed an informal meeting with Departmental officials to update new members on the Strategic Energy Framework, Energy Bill and Tourism Bill.

Agreed: Content for Committee Office to schedule.

Members noted that the Chair has been invited and will attend the economic conference

12.43pm The Chairperson adjourned the meeting.

[EXTRACT]

Thursday, 16 September 2010 Room 30, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Mr Paul Frew
Mr Paul Givan
Mr William Irwin
Mr Sean Neeson
Ms Jennifer McCann
Ms Claire McGill
Mr Gerry McHugh
Dr Alasdair McDonnell
Mr Sean Neeson

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Sohui Yim (Assistant Clerk)
Mr Michael Greer (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)

10.35am The meeting began in public session.

8. Energy Bill: Written briefing

Members discussed the written briefing.

Agreed: To invite the Utility Regulator and the Consumer Council to provide oral evidence on the Energy Bill.

Agreed: To start next week's meeting in closed session to consider internal memos from the Examiner of Statutory Rules regarding the Energy Bill and Tourism Bill.

1.07pm The Chairperson adjourned the meeting.

[Extract]

Thursday, 23 September 2010 Room 30, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Mr Leslie Cree
Mr Paul Frew
Mr Paul Givan
Mr William Irwin
Ms Jennifer McCann
Ms Claire McGill
Mr Gerry McHugh
Mr Sean Neeson

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Sohui Yim (Assistant Clerk)
Ms Tara McKee (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)

10.35am The meeting began in public session.

1. Consideration of Energy Bill: Internal memo from Examiner of Statutory Rules

Members discussed the memo.

Agreed: Content with the Examiner of Statutory Rules' advice.

7. Energy Bill: Oral briefing

11.03am Consumer Council officials joined the meeting.

Members agreed that agenda item 9 would be considered next.

9. Energy Bill: Oral briefing

Members received an oral briefing from John French and Richard Williams of the Consumer Council. Key issue discussed included the Energy Bill: powers of entry and guaranteed standards of performance.

12.03pm Sean Neeson left the meeting.

12.04pm Consumer Council officials left the meeting.

12.07pm Jennifer McCann left the meeting.

10. Energy Bill: Oral briefing

12.06pm Brian McHugh joined the meeting.

Members received an oral briefing from Brian McHugh of the NI Authority for Utility Regulation. Key issue included the Energy Bill: powers of entry, guaranteed standards of performance and special administration regime for gas and electricity.

12.20pm Brian McHugh left the meeting.

Agreed: To write to the Department to obtain clarification and views in relation to Clause 10 and 14 of the Bill.

12.32pm The Chairperson adjourned the meeting.

[Extract]

Thursday, 14 October 2010 Room 30, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Mr Paul Frew
Mr Paul Givan
Mr William Irwin
Ms Jennifer McCann
Dr Alasdair McDonnell
Mr Gerry McHugh
Ms Claire McGill
Mr Sean Neeson
Mr Leslie Cree

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Sohui Yim (Assistant Clerk)
Ms Tara McKee (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)

10.40am The meeting began in public session.

7. Energy Bill: Preliminary View

Members discussed the Energy Bill.

12.45pm William Irwin rejoined the meeting.

12.48pm DETI Energy officials were called to the meeting.

12.53pm Alasdair McDonnell left the meeting.

1.15pm DETI Energy officials left the meeting.

Agreed: To receive clarification from the Department regarding Clauses 10, 14 and 35 of the Bill and discuss again at the meeting of 4 November.

1.22pm The Chairperson adjourned the meeting.

[Extract]

Thursday, 21 October 2010 Room 30, Parliament Buildings

Present: Mr Paul Butler (Deputy Chairperson)

Mr Leslie Cree

Mr Paul Frew

Mr Paul Givan

Ms Claire McGill

Mr Gerry McHugh

Mr Sean Neeson

In Attendance: Dr Kevin Pelan (Assembly Clerk)

Ms Sohui Yim (Assistant Clerk)

Ms Michelle McDowell (Clerical Officer)

Mr Dominic O'Farrell (Clerical Officer)

Apologies: Mr Alban Maginness (Chairperson)

Mr William Irwin

Ms Jennifer McCann

10.33pm The meeting began in closed session.

4. Matters arising from meeting on 14 October 2010

Members briefly discussed the Energy Bill and noted that they are awaiting the Department's comments and views on Clause 10 and Clause 14 of the Bill.

Agreed: To forward the Department's comments on Clause 10 of the Bill, along with the Committee's views to the Consumer Council for comment.

12.20pm The Deputy Chairperson adjourned the meeting.

[EXTRACT]

Thursday, 4 November 2010

Room 30, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Mr Paul Frew
Mr Paul Givan
Mr William Irwin
Ms Jennifer McCann
Dr Alasdair McDonnell
Mr Gerry McHugh
Ms Claire McGill
Mr Sean Neeson

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Ashleigh Mitford (Assistant Clerk)
Ms Pauline Devlin (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)

Apologies: Mr Leslie Cree

10.12am The meeting began in public session.

4. Matters arising from meeting on 21 October 2010

The Committee noted a briefing from the Consumer Council in relation to its views on clause 10 of the Energy Bill.

Agreed: To copy the response to Departmental officials.

9. Energy Bill – Preliminary view and Formal clause-by-clause

The Committee discussed outstanding issues in relation to the Energy Bill.

12.45pm Mr Irwin left the meeting

12.52pm Mr Givan rejoined the meeting

Agreed: The Committee agreed that it would vote on an amendment to clause 10 at formal clause by clause scrutiny stage.

The Committee formally scrutinised, clause-by-clause, The Energy Bill and agreed the following:

Clauses 1-9

1. Standards of performance in individual cases
2. Standards of performance in individual cases: disputes
3. Overall standards of performance

4. Procedures for determining standards of performance
5. Standards for promoting efficient use of gas
6. Information with respect to levels of performance
7. Information to be given to customers about overall performance
8. Procedures for dealing with complaints
9. Amendments to Energy Order relating to standards of performance

Question put and agreed: That the Committee is content with Clauses 1-9, as drafted.

Clause 10 – Damage to Gas Plant

Ms McCann proposed the following:

That clause ten, page 6, line 40 - leave out "or culpable negligence"

Question put

That this amendment be made.

The Committee divided. Ayes 4; Noes 2.

AYES

Ms McCann, Ms McGill, Mr Butler, Mr McHugh

NOES

Mr Frew, Mr Givan

Question put and agreed to.

Question put and agreed: That the Committee recommends to the Assembly that clause 10 be amended as follows, as agreed by the Department:

Clause 10, page 6, line 40, leave out 'negligence' in line 40 to 'conveyor' in line 41 and insert –

- (a) damages or allows to be damaged any gas plant provided by a gas conveyor;
- (b) alters the index of any meter used for measuring the quantity of gas conveyed or supplied by a gas conveyor or a gas supplier; or
- (c) prevents any such meter from duly registering the quantity of gas conveyed or supplied,

Clause 10, page 7, line 3, leave out 'subsection (1)' and insert 'subsection (1)(a)'

Clause 10, page 7, line 14, leave out 'or disposal' and insert, 'disposal or repair'

Clauses 11-23

11. Exemption of gas plant from certain processes
12. Deemed contracts for supply in certain cases
13. Modification of conditions of gas supply licences in relation to deemed contracts
14. Powers of entry
15. Storage of gas
16. Appointment of meter examiners
17. Energy administration orders
18. Objective of an energy administration
19. Applications for energy administration orders
20. Powers of court
21. Energy administrators
22. Conduct of administration, transfer schemes etc.
23. Restrictions on winding-up orders

Question put and agreed: That the Committee is content with Clauses 11-23, as drafted.

Clause 24 - Restrictions on voluntary winding up

Question put and agreed: That the Committee recommends to the Assembly that Clause 24 be amended as follows, as proposed by the Department:

Page 16, line 8, leave out 'leave' and insert 'permission'

Clauses 25-34

25. Restrictions on making ordinary administration orders
26. Restrictions on administrator appointments by creditors etc.
27. Restrictions on enforcement of security
28. Grant and loans
29. Indemnities
30. Guarantees

- 31. Modification of particular or standard conditions
- 32. Licence condition to secure funding of energy administration
- 33. Interpretation of Part 2
- 34. Regulations

Question put and agreed: That the Committee is content with Clauses 25-34, as drafted.

Clause 35 – Interpretation

Question put and agreed: That the Committee recommends to the Assembly that Clause 35 be amended as follows, as proposed by the Department:

Page 23, line 40, leave out 'Energy' and insert 'Utility'

Clause 36-37

- 36. Commencement
- 37. Short title

Question put and agreed: That the Committee is content with Clauses 36-37, as drafted.

Schedule - Energy transfer schemes

Question put and agreed: That the Committee is content with the Schedule, as drafted.

Long Title

Question put and agreed: That the Committee is content with the long title, as drafted.

Agreed: To consider the draft report of the Bill at next week's meeting.

1.15pm The Chairperson adjourned the meeting.

[EXTRACT]

Thursday, 11 November 2010 Room 30, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Mr Paul Frew
Mr Paul Givan
Mr William Irwin
Ms Jennifer McCann
Dr Alasdair McDonnell
Mr Gerry McHugh
Ms Claire McGill

In Attendance: Mr Jim McManus (Assembly Clerk)
Miss Karen Jardine (Assistant Clerk)
Ms Michelle McDowell (Clerical Officer)
Ms Dagmar Walgraeve (Clerical Officer)

Apologies: Mr Paul Butler (Deputy Chairperson)
Mr Sean Neeson
Mr Leslie Cree

10.07am The meeting began in public session.

6. Energy Bill: Draft report

The Committee formally scrutinised each paragraph of the draft report.

Agreed: That the executive summary at paragraphs 1-16 stands part of the report.

Agreed: That the introduction at paragraphs 17-21 stands part of the report.

Agreed: That the summary of the draft Bill as presented to the Committee at Committee Stage at paragraphs 22-60 stands part of the report.

Agreed: That the summary of consideration of the Bill at paragraphs 61-139 stands part of the report.

Agreed: That the summary of consideration of other issues of the Bill at paragraphs 140-146 stands part of the report.

Agreed: That the clause-by-clause consideration of the Bill at paragraphs 147-156 stands part of the report.

Agreed: That the entire report with minutes of proceedings, minutes of evidence and written evidence will be considered at next week's meeting.

1.05pm The Chairperson adjourned the meeting.

[EXTRACT]

Thursday, 18 November 2010 Room 30, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Mr Paul Frew
Mr Paul Givan
Mr William Irwin
Ms Jennifer McCann
Dr Alasdair McDonnell
Mr Gerry McHugh
Ms Claire McGill
Mr Sean Neeson
Mr Leslie Cree

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Sohui Yim (Assistant Clerk)
Ms Alison Ferguson (Clerical Officer)
Ms Michelle McDowell (Clerical Officer)

Apologies: Mr Paul Butler (Deputy Chairperson)

10.35am The meeting began in public session.

7. Energy Bill: Final report

The Committee formally scrutinised each appendix of the final Bill report.

Agreed: That the following papers should be appended to the Committee's report:

Minutes of proceedings

Minutes of evidence (Hansards)

Written submissions

Memoranda and papers from DETI

The Assembly Research Papers

List of witnesses

Agreed: Content that the draft Hansard from the 4 November meeting be included in the report as the final version.

Agreed: Chair to approve an extract from today's minutes which reflect the read-through of the Report.

Agreed: To lay to report in its entirety in the Assembly Business Office after today's meeting.

Agreed: To order 50 reports with a CD ROM and 30 full reports for printing.

1.26pm The Chairperson adjourned the meeting.

[EXTRACT]

Appendix 2

Minutes of Evidence

29 March 2010

Members present for all or part of the proceedings:

Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)

Mr Gregory Campbell
Mr Leslie Cree
Ms Jennifer McCann
Dr Alasdair McDonnell
Mr Alan McFarland
Mr Gerry McHugh

Witnesses:

Ms Jenny Pyper
Mr Fred Frazer DETI Energy Division
Ms Susan Stewart

1. The Chairperson (Mr A Maginness): I welcome the departmental officials to the Committee this morning.

2. Ms Jenny Pyper (Department of Enterprise, Trade and Investment): I will give an overview of the draft Bill and then hand over to Fred Frazer and Susan Stewart who are on the Bill team and are, therefore, involved with the detail of the legislation.

3. We are grateful for the opportunity to update the Committee on the proposed energy Bill, as it is now named. The Committee will recall that the draft energy Bill started life as a draft gas Bill because the bulk of the provisions relate to gas issues. However, the Office of the Legislative Counsel (OLC) deemed it appropriate that the Bill should be known as the draft energy Bill because there is provision for the special administration arrangements for electricity in addition to those for the natural gas industry. Consequently, the thrust of the draft energy Bill remains focused on the gas industry.

4. The Committee will be aware that the Department's 12-week consultation on the policy proposals closed at the end of September 2009. Fourteen organisations responded, 12 of which made substantive submissions. The other two respondents made no comments. There were no overall objections to the proposals.

5. We have provided the Committee with written information on the progress of the draft energy Bill since our proposals emerged in 2009. More recently, we updated the Committee on 22 February 2010 on the full consultation responses to the proposals. We also provided the Committee with a copy of the draft Bill and its associated explanatory and financial memorandum. The next step will be to submit the draft Bill to the Executive requesting approval to introduce it to the Assembly. We hope to do that after the Easter recess, and introduce the Bill in May 2010. I wish to draw the Committee's attention to the fact that there are a few reserved matters in the draft Bill, particularly in relation to penalties and a number of GB insolvency issues. On 25 March 2010, after talking to officials in the Northern Ireland Office, we received formal consent from the Secretary of State to the inclusion of those reserved aspects in the draft Bill.

6. Fred Frazer will now give a brief overview of the draft Bill and comment on the consultation responses in more detail, after which we will answer questions.

7. Mr Fred Frazer (Department of Enterprise, Trade and Investment): The intention behind the draft Bill is to update current legislation. The provisions apply principally to the natural gas industry but the special administrative arrangements apply to the electricity sector too. I will go quickly through the draft Bill's provisions.

8. The provisions will enhance powers of access for gas companies; for example, to enter premises in which meter-tampering is suspected. Gas companies are currently unable to enter property to inspect their equipment unless there is a safety concern. The new provisions will provide gas companies with extended powers of entry, which will be analogous to those that are in place for the electricity industry in Northern Ireland and in GB.

9. The legislation proposes that a person seeking entry to a property will have to provide evidence of their authority and sufficient notice. Entry can only take place at reasonable times. In addition, in extreme circumstances in which entry is not agreed to, a special case for a warrant will have to be made to a court. The proposals contain safeguards to protect consumers, such as the requirement to satisfy a magistrate in order to obtain a warrant. The provisions will also introduce a new offence of damaging a gas plant, which is similar to provisions contained in the Electricity (Northern Ireland) Order 1992.

10. The Bill will introduce guaranteed standards of performance for the gas industry, which will provide consumers with specific, measurable, achievable, reliable and timely standards to gauge the level of service provided by different gas companies. This will help to create a level playing field for customer standards analogous to those for electricity.

11. Importantly, the Bill will provide for deemed contracts between gas companies and customers. This will come into play when properties change ownership, where, for example, in the middle of winter, a customer wishes to switch on the gas but does not have a contract with a gas supplier.

12. The introduction of a special administration scheme for the natural gas and electricity industries in Northern Ireland is an important development. Current insolvency arrangements mean that in the unlikely event that a utility company becomes insolvent; the primary responsibility is towards creditors. However, the proposed legislation will provide for gas networks to remain in place and operational to ensure that gas supplies to consumers can continue in the event of a company failure. It is a mechanism that is designed to safeguard the provision of supplies by local gas and electricity networks. Responsibility for a utility company that becomes insolvent will be transferred to a special administrator appointed by the High Court, and that administrator will put the energy consumers' interests above those of creditors and shareholders.

13. A minor part of the draft Bill updates provisions on gas storage. 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.

14. We received responses to the consultation, which we have provided to the Committee. The draft Bill proposes the extension of powers of access for gas companies. Consumer bodies accepted that tampering with gas meters is a serious issue and has potential safety implications. We believe that the proposals contain sufficient safeguards to allay any concerns that consumer bodies and others may have about access to property. I have outlined some of the safeguards already, such as that sufficient notice is given and that warrants be obtained in certain circumstances.

15. The existing provisions provide powers of access where there is danger to life or property; for example, from a gas escape. Existing provisions in the Gas (Northern Ireland) Order 1996 require that premises entered are left secure, that any damage is made good, and that compensation is given for any damage caused. Legislative provisions cannot be fully prescriptive, and the Department will work with the Consumer Council and the Utility Regulator on the detailed outworking of the Bill's provisions.

16. There was a particular comment regarding the special administration arrangement. I think that there was some confusion with our most recent secondary legislation regarding the supplier-of-last-resort regulations for the gas industry. Those regulations relate to the supply aspect of gas, while special administration deals more with the network, distribution and transmission arrangements.

17. The area of deemed contracts between the gas company and the consumer is an example of where a change was made to the provisions following consultation. Consultation comments noted that the Bill should include provision for gas licence conditions. We cited the provisions contained in the Electricity Order (Northern Ireland) 1992, which require the licensee to ensure that the terms of the contract are not unduly onerous. The proposal was accepted, and it resulted in a change to the original legislative proposals.

18. Some gas companies were not totally convinced of the need for industry standards in the form of guaranteed standards of performance. In particular, they were concerned that gas companies might have to pay compensation. However electricity legislation in Northern Ireland, GB and elsewhere provide for such compensation to be paid if customer standards are not met. Some companies supported the setting of guaranteed standards, but they requested that suppliers are not penalised unfairly; for example, if the fault is due to other gas distribution operators. The Department will work with the Consumer Council and the Utility Regulator on those issues. We welcome any comments from the Committee.

19. The Chairperson: Much emphasis has been placed on the provision for gas companies to enter properties, and I know that you said that the draft legislation contains safeguards. However, what was the Consumer Council's view on that aspect? I know what it said in outline, but does the council remain convinced that safeguards need to be strengthened, or is it happy with those safeguards?

20. Ms Pyper: The Consumer Council accepted that the Bill will bring the gas industry into line with the electricity industry, and it wanted to ensure that the Department is cognisant of the need to look after consumers' interests. We have given the Consumer Council all of the assurances that we can give, and the legislation will not be prescriptive on that aspect. The detail lies in the outworking, and we will continue to work with the Consumer Council on that. Its concerns were not that it opposed powers of entry; it simply wanted to register its view that the gas companies could not be given carte blanche and that those powers need to be operated sensitively and properly. The draft legislation includes some strengths, to which Fred Frazer has referred. The Consumer Council has indicated that it is content. However, we cannot be absolutely sure until those things work through.

21. The Chairperson: When you mention being too prescriptive, what does that mean in practice?

22. Ms Pyper: It refers to detailed requirements on the gas companies other than those outlined in the legislation. However, the Consumer Council felt that nothing needed to be added with regard to consumers' interests. The detail will be in the outworking. We will have to work with the Consumer Council and the Utility Regulator on the guidelines for the gas companies, based on the provisions in the legislation.

23. Mr Butler: With regard to performance standards, there is nothing in the legislation to say that gas companies will have to compensate consumers for service delivery failure. Will the cost of that be taken from other consumers, and is that not a concern?

24. Mr Frazer: Yes. If standards are not met, the gas company will, potentially, have to pay compensation. That is the overall desire in the legislation.

25. Mr Butler: Nevertheless, the gas companies, to compensate for what they would lose, could charge other customers by adding to their bills.

26. Mr Frazer: 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.

27. Ms Pyper: That moves beyond the Department's remit and into the work of the Utility Regulator in scrutinising the gas companies' requests to recoup costs. The regulator, and we, will be mindful of that.

28. Ms Susan Stewart (Department of Enterprise, Trade and Investment): That will be finalised in the primary legislation, because of the powers included there to make subordinate legislation. All those details will be finalised through the subordinate legislation.

29. Mr Butler: There has been controversy around powers of access, even with NIE, in that companies could abuse such powers. There was evidence to show that when Phoenix Gas tried to enter premises, it appeared that the people involved had not tampered with the meters, although I know that it goes on. Will companies have to go to court to get access to properties?

30. Ms Stewart: Under the primary legislation, owner/occupiers do not have to provide consent for a gas company to enter their premises. It is only at that point that a gas company will have to go to a Justice of the Peace to get a warrant. The gas company has to give good, sound evidence that there has been meter-tampering or that there is a danger to life or premises.

31. Mr Frazer: The Justice of the Peace has to be convinced that there is a need to grant a warrant.

32. Ms Pyper: Part of the reason for wishing to bring in this legislation is to put a proper process in place that companies will have to follow: such a proper process has not existed to date. One of the benefits of bringing in these powers is that the process will have to be followed and standards will have to be adhered to in order for companies to gain access.

33. The Chairperson: Do electricity companies have a statutory power to enter premises?

34. Ms Stewart: Yes. This is equivalent to those powers.

35. The Chairperson: Is this putting in place a similar statutory power?

36. Ms Stewart: Yes, exactly.

37. Ms J McCann: As regards gaining access, Citizens Advice asks what companies have to do to prove that there is a suspicion in the first place, and how can one ensure that companies are not exploiting such powers? There is a serious safety issue when it comes to meter-tampering. When companies are seeking to gain access, how can they prove that they know that a meter has been tampered with?

38. There does not seem to be any provision in the draft Bill to cover the situation where there is suspicion of meter-tampering. In my constituency, meters have been removed and people have been left without heat and gas until it has been proven that they did not tamper with them. Does the draft Bill provide for that situation? A suspicion is merely a suspicion until it has been established whether people have tampered with their meters. How can it be ensured that people who have not tampered with their meters continue to have a supply of gas until the accusation

has been proven or refuted? Will the Bill make provision for independent assessors to carry out the check for meter-tampering, or will the gas companies have that role?

39. Mr Frazer: The gas company will expect to have access to inspect meters, and it seems reasonable to grant it that power. If there is a reason for not granting that access, the gas company will then have to make a case for it and, in extreme cases, go to the court for a warrant. It would have to convince a magistrate that there were sound reasons for gaining access; such as, for example, meter-tampering. There is a process to be followed.

40. Ms Stewart: Schedule 5 of the Gas Order (Northern Ireland) 1996, which is entitled "powers of entry, etc.", says:

"The Department may by regulations make provision— for empowering any person authorised by a relevant licence holder, where that licence holder has reasonable cause to suspect".

41. That relates to tampering. That provision is already in the existing provisions, and that is why it will be considered in the new legislation.

42. Ms J McCann: The term "reasonable cause" has not been defined.

43. Ms Pyper: 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. We share the Committee's concerns about maintaining continuity of supply.

44. Ms Stewart: Furthermore, the existing Gas Order says, that if the company suspects tampering, it is liable for:

"(a) ensuring the safety of the gas system on those premises or of gas fittings; or carrying out any necessary works of maintenance, repair or renewal of any part of the gas system".

45. I do not think that we will remove such provision. The gas system will be repaired to ensure continuity of supply.

46. Mr Frazer: There are overarching principles that apply to vulnerable people, and so on. We will note the point and consider it further.

47. Ms J McCann: Who will check to see whether a meter has been tampered with?

48. Mr Frazer: We understand that the gas company will do that. Meters are its equipment.

49. The Chairperson: The standard is "reasonable suspicion" rather than mere suspicion. Is that right?

50. Ms Stewart: Yes.

51. The Chairperson: Therefore, the standard is higher than mere suspicion. It is not enough to suspect; the suspicion must be "reasonable". In other words, it must be based some sort of objective criteria such as excessive gas usage. That provides additional protection in the circumstances.

52. Ms Pyper: The burden of proof is on the companies to demonstrate that they have sufficient evidence to justify gaining access to a person's property. The bar is high.

53. The Chairperson: I am sure that, in due course, we will hear from the Consumer Council and other organisations that have an interest in the matter. It is important to preserve peoples' right to enjoy their homes.

54. Mr McHugh: Like other members, I am cautious about giving companies more power than they have already. I wonder why they require this power. Is meter-tampering so widespread as to make this action necessary? I know that some utility companies are in the happy position where they can threaten to cut off a customer's supply if he or she is unable to pay, whereas private enterprises must wait or not be paid at all. However, utility companies still demand payment on time or they will cut off supply. I am suspicious of their intentions in this. One has to be careful about taking away people's rights, or making life that bit more difficult for those who do not have a guaranteed income to pay for everything.

55. I wonder about the figures involved in making the case for this. Is the practice widespread? When it comes to inability to pay; is cutting off supply part and parcel of the need for access? NIE would take such a course of action if one were unable to pay.

56. Ms Pyper: The key thing is that we have a gas industry that has moved beyond fledgling stage and, though not yet mature, has come on. These powers, as the Chairperson has pointed out, bring electricity and gas on to the same level.

57. I appreciate what the member says about the balance of power shifting in favour of the gas companies, but that is designed to protect their business interests as well. They are trying to grow their businesses. We do not have the figures for cut-off with us: however, if the Committee wants them, we can provide them. The only source is the companies, and we will ask them for the figures.

58. Mr McHugh: What I am saying is that if we are talking about this draft Bill, then meter-tampering and the slowing down of business progress must have been widespread. Am I wrong?

59. Ms Pyper: I do not think that the practice is widespread. However, there are cases of it, and our primary concern is safety. It presents a serious risk, not only to individual householders but potentially to streets of householders. I think that that is the fundamental concern. I do not have figures to hand that can tell us how widespread it is. The situation is not unique to Northern Ireland; it goes on wherever there is a gas industry. Companies did not tell us that this is a massive problem or that it gives them major concern. However, it is an issue. Powers did not exist to provide for a proper process for companies to gain access, and there were safety concerns, for companies and individual householders.

60. Mr Frazer: The gas industry is different from the electricity industry in that it has a high level of pre-payment meter usage. Unpaid bills are unlikely to lead to supplies being cut off; it is more likely that people will top up their card for use in pre-payment meters. Over 50% use that method of payment. The Utility Regulator has recently removed the cap on pre-payment meters, so that more people can have them and can budget properly.

61. As Ms Pyper mentioned, gas is also different from electricity in that, with electricity, meter-tampering can have serious consequences for the individual who does it; but with gas, the consequences can be serious not just for the individual, but for their household and for those further afield.

62. The Chairperson: It would be helpful if the Committee could see figures or some description of the extent of this mischief. An indication of how widespread the practice is would be helpful. If you cannot provide that today, that is OK; it would be useful to have it in the future.

63. Ms Pyper: I remember that an Assembly Question was asked about this area: it may have been about unpaid bills and cut off, or in relation to tampering. I cannot remember. However, we will try to get up-to-date figures from the companies as quickly as we can.

64. The Chairperson: Thank you. We appreciate it.

65. Mr Cree: I have two points. The first is that Jenny called this a draft "Gas Bill". It is a little cumbersome and unhelpful to present what is ostensibly a draft Gas Bill with an electricity bit stuck on to it. Would it not make more sense to include the part that deals with electricity as an amendment to the Energy (Northern Ireland) Order 2003, which would mean that this Bill could deal exclusively with gas? From the point of view of practitioners, it can be unhelpful to have a miscellany of Orders and Bills. Hitherto, we have had electricity Bills and gas Bills.

66. I come at this from a different point of view to most of my colleagues, but I believe that to ensure the safe operation of the system, the gas companies must have access to houses. I declare an interest as I have been involved in gas companies in a previous life. Having had that experience, I know that people display a dramatic amount of innovation in bypassing a meter. We should not be too prescriptive. I have listened to the questions that have been asked, and I wonder about the answer to this question: if I were in charge of one of the gas companies, how would I know that I was being paid for the gas that was being distributed? There is no way for a gas company to know that it is being paid for all the gas that it issues, because meters are not checked regularly to ensure that they are accurate. The euphemism used to be "unaccounted-for gas", which was the difference between outlet volumes and sale volumes. We need to be a bit more flexible. How does a gas company know whether someone has bypassed a meter? If gas records are not available from before a customer takes over an account, it is just not practical to make a case in court.

67. Jenny talked about the gas industry maturing. Ireland has had a gas industry for 180 years. What happened to all the old gas Acts? We seem to be reinventing the wheel.

68. Ms Pyper: The first point was why we should make provision for electricity companies in what is predominantly a gas Bill. We want to bring in special administration provisions for electricity and gas at the same time because of concerns about the economic downturn. When there are economic uncertainties, having a special administration provision might be valuable if electricity supply companies are seriously threatened.

69. That may seem to be a remote prospect; however, when we were beginning work to introduce the Bill, the regulator was particularly concerned about that possibility, which was seen as a potential threat to, and a vulnerability in, the energy industry here. While drafting the legislation, neither the Departmental Solicitor's Office (DSO) nor OLC objected to having, or thought it incompatible or inconsistent to have, one electricity provision when the rest related to gas. Although I understand that we could perhaps have included that provision in electricity legislation, we felt that the Bill was a timely way to ensure that protections are put in place.

70. Mr Frazer: The provisions include the need to check meters and, if necessary, remove money from them, although that is now done electronically. Mr Cree, you are quite right; to confirm usage and so forth, meters need to be read and checked at least annually, so that is part of the provisions.

71. Ms Pyper: Mr Cree's other point was about old gas legislation.

72. Mr Cree: Indeed, but the main thrust is that, to ensure the safe operation of the system and the safety of individual houses, and, as you said, streets, the utility company must have powers of access. For example, there is nothing to stop someone from disconnecting a meter altogether, bypassing the regulator and sending gas straight to their appliances. How would the gas company handle that situation?

73. Ms Pyper: I assume that it deals with such situations through meter-reading inspections.

74. Mr Cree: But it has to get in to houses.

75. Mr Frazer: If a gas company strongly suspects that there is a safety issue, there are provisions in the existing gas legislation that allow it to enter a property.

76. Mr Cree: There is a difference between "strongly suspecting" and "proving". For example, if I have a vacant house with a gas supply that I have not used for five years, how do I know that that supply has not been connected up and used without a meter?

77. Mr Frazer: I presume that the gas company would want to inspect the equipment.

78. Mr Cree: There is no equipment; the gas supply is in the house, and the meter was taken out some time ago.

79. Mr Frazer: It might be listed in the company's register of meters and supplies that a meter was present and had not been removed. Therefore, it would be known that an offence had perhaps been committed.

80. Mr Cree: I do not follow that logic. There is only a standpipe in the house.

81. Mr Frazer: The records might show that —

82. Mr Cree: The record would show that the meter was taken out. What is to stop me connecting up without a meter? I do not need a meter. It works just as well without one.

83. Mr Frazer: That is a question for the gas companies, so we could discuss the matter with them.

84. Ms Pyper: They have not asked for more powers than we are proposing.

85. Mr Cree: We are doing all this in bits and pieces, which brings me back to my previous question. What happened to the gas legislation that we had since the 1830s?

86. Ms Pyper: I do not know the details of that legislation. Since Phoenix came in to build the new natural gas industry, we have had new gas legislation to facilitate the development of a new industry.

87. Mr Cree: The logic is the same. Will you find out what happened to that legislation?

88. Ms Pyper: Things have changed considerably since then, and I suspect that the appropriate provisions may not exist.

89. Mr Campbell: Do you mean that you are not familiar with the 1832 Act? [Laughter.]

90. Ms Pyper: I just do not have it to hand.

91. Mr Cree: Nevertheless, it is an interesting point.

92. Ms Pyper: We shall seek DSO's views on the applicability of old legislation.

93. Mr Campbell: Citizens Advice welcomes the fact that energy supplies will be maintained to customers in the event of insolvency. Will the new energy Act change the present guaranteed continuity of supply to insolvent customers?

94. Mr Frazer: The difficulty is that, under the current arrangements, when a company becomes insolvent the administrator is responsible to creditors. Under the system that we are putting in place, the special administrator will have to give foremost consideration to maintaining continuity of supply to the networks, which provides added protection for consumers. Therefore, if a company fails, consumers will not lose their gas or electricity supply. Under the current arrangements, they might. That is a fundamental change under the new legislation.

95. Mr Campbell: How will guaranteed continuity of supply work?

96. Mr Frazer: It will be a legal requirement of the special administration scheme. That legal requirement does not currently exist.

97. Ms Pyper: Another supplier would have to be appointed, and that is the core provision that is not in the existing insolvency legislation. A special regime is required specifically for that purpose.

98. Mr Frazer: A special administrator would probably run the company.

99. Mr Campbell: Citizens Advice raised the issue of setting up a hardship fund, similar to the one that is available in GB, and it mentions other areas that affect vulnerable groups. The departmental response was:

"Any proposals as to charitable funds are outside the scope of the Consultation."

100. That is in the summary of consultation responses, under 'Guaranteed Gas Standards of Performance'. I do not see a paragraph number. The response states:

"We would like to see an equivalent hardship fund set up for Northern Ireland."

101. If that is outside the scope of the consultation, whose responsibility might it be to consider the setting up of such a fund? We are talking about people who are in acute financial hardship, such as vulnerable groups, senior citizens, etc.

102. Ms Pyper: It would need to be something that the Department, the regulator, the Consumer Council and Citizens Advice would discuss and consider. I suspect that when it comes to the gas companies' licences, the regulator might take the lead and stipulate that provision be made for such a fund.

103. Mr Campbell: Apart from Citizens Advice, has anyone else raised the issue of a hardship fund?

104. Ms Pyper: No one apart from the Citizens Advice raised it. I do not think that the Consumer Council did.

105. Mr McFarland: If Phoenix, for example, were centred internationally and were taken over by a Japanese firm that then went into liquidation abroad, different insolvency rules would apply. How would that impact on guaranteed supply here, and would this legislation perhaps work against insolvency rules and systems abroad?

106. Ms Pyper: That would come under the special administration scheme.

107. Mr Frazer: There is a lot of detail in that scheme. The issue was raised by our insolvency service, and the Department's view is that, if a company operates internationally and has its centre in a foreign jurisdiction, the insolvency law in that jurisdiction will apply. Apparently, that is normal practice.

108. Mr McFarland: Does that take priority over anything that might be organised in this legislation?

109. Mr Frazer: It seems to suggest that.

110. Mr McFarland: How do we go about preserving continuity of supply? You suggested earlier that it would transfer to some other supplier.

111. Mr Frazer: The special administrator would have the overall power and would get another company to take over the supply role. It is really about distribution. We have separate regulations supporting legislation that deals with supplier of last resort for supply companies. The proposal would apply to network companies.

112. Mr McFarland: The paper mentions giving grants, but does that not clash with state-aid rules? Why are you not giving loans?

113. Mr Frazer: Potentially, they could clash. We would have to consider that issue when putting together a package of measures in conjunction with the regulator. You are quite right that state-aid rules would have to be adhered to.

114. Mr McFarland: Would it not be wiser to use the word "loans" rather than "grants"?

115. Ms Pyper: That might be an option.

116. Mr McFarland: Have you done the research on the issue?

117. Ms Pyper: We have not got as far as working out the detail of that.

118. The Chairperson: Just to recap; if there were any problems with insolvency and the different rules that apply in another country, the supply in this jurisdiction would continue and the Government would support that. They would hope to recoup the loss from that company or from the assets of that company at some stage.

119. Ms Pyper: Under the supplier of last resort arrangements, regulations would be an option at supplier level. The provision relates to the wider distribution and failure at the distribution or network level. As Fred Frazer said, separate legislation protects supply at an individual level.

120. Mr Frazer: There are many gas supply companies that have licences. There are approximately six, but not all of them are active. The distribution is with a particular company.

121. The primary role of the special administrator who will be appointed to oversee the failed distribution company is to ensure continuation of supply. The supply companies have separate legislation. The regulator can appoint another supplier if a supply company fails.

122. The Chairperson: All our questions have been asked. Perhaps you will reply in writing to any additional questions, or contact us in writing if anything arises or occurs to you after the meeting.

123. Ms Pyper: We will come back to you on company figures on meter tampering and on the applicability of the town gas legislation.

124. The Chairperson: We will need an in-depth history.

125. Ms Pyper: If that is the case, we will ask someone from DSO to attend.

126. The Chairperson: Thank you for attending this morning's Committee meeting.

9 September 2010

Members present for all or part of the proceedings:

Mr Alban Maginness (Chairperson)
Mr Leslie Cree
Mr Paul Frew
Ms Jennifer McCann
Mr Gerry McHugh
Mr Daithí McKay

Witnesses:

Mr Fred Frazer
Ms Irene McAllister Department of Enterprise, Trade and Investment
Ms Susan Stewart

127. The Chairperson (Mr A Maginness): Briefing the Committee today are Mr Fred Frazer, Ms Irene McAllister and Ms Susan Stewart from the Department of Enterprise, Trade and Investment (DETI) energy markets unit. You are very welcome. Perhaps you would like to present the Department's response on the Bill.

128. Mr Fred Frazer (Department of Enterprise, Trade and Investment): Certainly, Chairperson. First, I apologise for the late delivery of the Department's response. That was just due to internal processes within the Department. Thank you for giving us an opportunity to update you on the proposed Energy Bill and to discuss the issues that have been raised for consideration by Committee members and stakeholders in response to the initial request for comments on the Bill's provisions.

129. As members are aware, the Energy Bill is intended to upgrade current legislation applying to the natural gas sector in Northern Ireland in order to bring that sector broadly into line with the electricity sector, with the additional provision of creating a special administration regime for both the gas and electricity sectors.

130. The Committee called for evidence relating to the Bill on 20 July and several responses were received, which we have been considering. There were no overall objections to the Bill's

proposals, but some useful comments were made and, as a result of the issues that were raised, the Department proposes to make two minor amendments. If the Committee is content, I will take a few minutes to provide a brief overview of the key issues, and then I will comment on the Department's response, and take questions.

131. The Chairperson: Yes, please.

132. Mr Frazer: The first issue is the introduction of guaranteed standards of service. In response to the Bill's provisions for the introduction of guaranteed standards of performance for gas companies in individual cases, the Consumer Council has suggested that compensation should be paid to customers when guaranteed standards are not met, and that any compensation payments should come from the profits of energy companies, rather than companies' customer base. In response, the Department has clarified that the proposed Bill does indeed make provision for compensation to be paid in such a situation. However, the details of how that will be implemented in practice will be subject to further discussion.

133. In that and other areas covered by the Energy Bill, legislative provisions cannot be fully prescriptive. The Department will work with the Consumer Council and the Utility Regulator on the detailed outworkings of the Bill's provisions. Although any proposals that are developed will be subject to further consultation, it is envisaged that guaranteed standards for the gas industry will operate along similar lines as those for the electricity sector. There is nothing in the regulatory price control for electricity to cover any such payments, so the company has to fund those. The Utility Regulator has carried out a consultation on standards of performance for utilities, which is useful in that respect.

134. The Phoenix Group has queried whether it is necessary to legislate in relation to establishing overall standards of performance, but the Department remains convinced that such action is necessary to bring the gas industry into line with the electricity industry in Northern Ireland and to provide consumers with specific, measurable, reliable and timely standards to gauge the level of service that is provided by different gas suppliers. It is also necessary to create a level playing field for competition.

135. Phoenix has also suggested that guaranteed standards should be implemented across all energy companies, including the oil industry. However, because the oil industry is not regulated in Northern Ireland or GB, and falls outside the remit of the Department and the Utility Regulator, we have no plans to introduce further legislation as suggested. We understand that the regulator is not pressing for the regulation of oil at the moment.

136. That deals with guaranteed standards of performance. I now turn to the Bill's provision for a deemed contract regime. When someone moves into a new house in the middle of January and switches on their gas supply, but they have not made a formal arrangement with the gas supplier, they effectively have a deemed contract with that supplier for whatever period of time that they wish, until they can formalise that. Phoenix Supply has indicated that the company will accept clause 13 of the Bill, which will enable the Utility Regulator to modify the conditions of supply licences in order to regulate the terms and conditions of deemed contracts on the basis that any modifications are made by agreement with the licence holder.

137. Currently, the Bill provides only that the regulator must consult the holder of any licence being modified, and it does not specifically require modification by agreement. The Department has sought legal advice on that issue and is satisfied that the current wording of the Bill represents the best approach to handling licensing modifications. Our view is that any other approach may lead to untimely delays and leave the process open to veto by a very small number of licence holders. Unlike in Great Britain, we have a relatively small number of gas

licence holders. There is precedent for the Department's proposals in other GB and Northern Ireland energy legislation.

138. I now move to the issue of enhanced powers of entry. The Consumer Council and Advice NI recognise the need for provisions to extend powers of entry in order to enable gas companies to enter premises and access buildings where meter tampering is suspected. However, they have reiterated the need to ensure that gas licence holders and supply companies act in a reasonable and fair manner when using those powers and that customers, particularly vulnerable ones, are not left without a gas supply when investigations into meter tampering are carried out. The Department believes that the existing and proposed legal provisions have sufficient safeguards in place with regard to access to property to fully allay those concerns.

139. For example, the gas supply company must first request access to a property from the occupier and give sufficiently reasonable notice. If a warrant is necessary to gain entry, the gas company must be able to satisfy a court of the need for access on the basis of reasonable suspicion. Reasonable suspicion may be different in each case and must be considered on an individual basis. For example, the fact that customers persistently refuse to permit access to a company to inspect a meter may give rise to reasonable suspicion. Information from a third-party source, which includes but is not limited to the police or other statutory agencies, may suggest that a meter has been tampered with. In addition, an irregular or unusual gas consumption or payment history that is indicated by a significant change between the current and previous consumption or payments may give rise to reasonable suspicion of meter tampering.

140. We are also satisfied that, in the event of a meter being removed for testing, gas companies will undertake to replace it with a pre-payment meter to ensure that an interrupted supply of gas is provided to the premises. The companies have also made a commitment to the Department to make suitable arrangements for collecting any debts that are identified. For example, pre-payment meters can be programmed to deal with that, in agreement with the householder. Therefore, customers have the option of paying restitution in full, if there is restitution to be paid, or agreeing to a suitable payment method to recover debts over time, such as a pre-payment meter.

141. I now move to the issue of gas storage. Stakeholders did not raise any issues about the Bill's provisions on gas storage, which are quite limited and aim simply to clarify the meaning of "store" for the purposes of the storage provisions in the Gas (Northern Ireland) Order 1996. I will clarify that: it is the operator of the gas storage facility, not the user, who stores the gas.

142. The next part of the Bill deals with the appointment of meter examiners. The Bill provides the regulator with the power to delegate gas meter stamping and testing functions. The Consumer Council has commented that it is content with the Department's response that only competent and impartial persons should be appointed as meter examiners from a body such as the National Measurement Office in GB in accordance with the existing requirements under the Gas Order.

143. I now move to the introduction of special administration regimes. The Bill provides for the creation of a special administration regime for the natural gas and electricity industries in Northern Ireland to safeguard the provision of supplies by local electricity and gas networks in the event of company insolvency. Stakeholders have not raised any substantive issues about that. However, Northern Ireland Electricity has suggested a minor drafting amendment to clause 24(4), which covers restrictions on voluntary winding up by protected energy companies as part of the provisions for a special administration scheme. The suggested amendment involves changing the reference from "an application for leave" to "an application for permission" in respect of voluntary winding up. The Department has consulted and received advice from the

Office of Legislative Counsel (OLC), which has agreed that that minor technical amendment is warranted.

144. Committee members asked the Department to explore the possibility of including a renewable heat incentive in Northern Ireland through amendments to the Energy Bill. The Department, in liaison with the Office of the Legislative Counsel, considered that issue. Unfortunately, the Committee's request cannot be accommodated because it falls outside the scope of the Bill. The OLC emphasised that the Bill deals with the gas and electricity industries, and that a renewable heat incentive is outside the scope of the Bill in respect of dealing with those types of utilities.

145. The Bill is primarily concerned with the gas industry. We are advised that such a change would require substantial redrafting, which could delay the Bill's progress. However, the Department is considering the need for a separate piece of primary legislation covering a number of miscellaneous energy provisions, which could be introduced next year — basically a new Bill. If taken forward, enabling powers for a renewable heat incentive could be incorporated in the Bill.

146. A number of issues raised by the OFMDFM Committee in relation to renewable energy in response to the call for evidence on the Bill also appear to fall outside its scope. However, the Department has provided an update for the Committee on developments in each of the areas raised in the summary table. I am happy to spend time going through those issues if the Committee would find it helpful, rather than deal with it now.

147. Finally, I draw the Committee's attention to a minor amendment that the Department proposes to make for reasons of accuracy. In clause 35(1), the Department intends to change the reference to the Northern Ireland Authority for Energy Regulation to its proper name, which is the Northern Ireland Authority for Utility Regulation. The Office of the Legislative Counsel is content with the proposed change.

148. That concludes my comments at this stage. I am happy to discuss any of the issues in more depth, or deal with the OFMDFM issues.

149. Mr Cree: I find the renewable heat sources issue a bit unfortunate. We do not want to reach the stage where we have a new energy Bill every year. That shows a marked lack of foresight. The Committee has received a letter from Aidan McKinney that refers to the "failure" of the Northern Ireland Assembly and the "delay and indecision" of the Assembly. Who is Aidan McKinney? Is he a civil servant?

150. Mr Frazer: I do not know him and, therefore, I cannot say.

151. Mr Cree: I am relieved to know that.

152. The Chairperson: He is from Nutherm.

153. Mr Cree: He is from Nutherm, and he does not have the courage to put that name on it. Obviously, there is no money for the renewable heat sources this year and probably next year.

154. Mr Frazer: That is not our field. I will have to come back to you on that. Our colleagues deal with renewable energy issues. As we understand it, DEFRA is proposing to incentivise renewable technologies through the renewable heat incentive (RHI). The incentive is not available in Northern Ireland at present. Our colleagues will be liaising closely with DEFRA over the next few months as they collate and assess responses to their ongoing consultation and

finalise proposals for RHI. Unfortunately, the Bill is limited primarily to the gas and electricity industries and, therefore, that is outside the scope of the Bill.

155. I appreciate your comments about an energy Bill every year, but we felt pressure to move forward on some of the important issues that are included in the Bill. However, we are scoping out other issues for inclusion in a further Bill, and that will be one of those issues.

156. The Chairperson: Thank you. If there are no other comments, are members content that the Department's responses fully address the issues addressed by stakeholders?

Members indicated assent.

16 September 2010

Members present for all or part of the proceedings:

Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Mr Leslie Cree
Mr Paul Frew
Mr Paul Givan
Mr William Irwin
Ms Jennifer McCann
Dr Alasdair McDonnell
Mrs Claire McGill
Mr Gerry McHugh

157. The Chairperson (Mr A Maginness): We will now discuss the written briefing on the Energy Bill. Members have received copies of a letter from the Department and the Energy Bill issues table. I remind you that the Bill was considered at last week's meeting, when it was agreed to discuss any issues arising. Are there any comments? Would you like to take oral evidence from stakeholders on some of the issues? For example, the Consumer Council and the Utility Regulator have indicated some concerns in relation to the legislation. We may want to invite representatives from those organisations.

158. Mr Cree: We need the gas people to come along — Phoenix and Firmus. We have had no comments from them, have we?

159. The Chairperson: We can, if you want. I wanted organisations that were raising issues of concern.

160. Dr McDonnell: It is important that we dig down into this a bit, from two perspectives. First, the overall cost of energy is one of the biggest millstones around our economic recovery. Secondly, from a renewables perspective there is a big issue in relation to job creation. The point I wanted to make, which I made privately to them outside, is that energy is barely mentioned in the Budget discussions, even though they are only in outline. It is mentioned in relation to one or two high-profile things, but I see renewable energy as creating all sorts of work in rural communities, and perhaps in Harland and Wolff as well, with the building of the turbines and all the rest. It is perhaps not appropriate to make the point here, but nevertheless I think that the energy division in the Department of Enterprise, Trade and Investment is far too small and ineffective.

161. The Chairperson: This is a fairly limited Bill, dealing purely with domestic users, rights of entry, etc. They are fairly limited issues. The issues that you are talking about are important, and they go well beyond the scope of this particular Bill. It may be more appropriate to direct your remarks to the renewable energy inquiry aspect of our agenda.

162. Dr McDonnell: I accept that.

163. The Chairperson: The Consumer Council and the Utility Regulator have expressed concerns, and I feel that we ought to invite them to give oral evidence. The informal indications are that they are happy to provide such evidence. Can we agree that?

Members indicated assent.

164. Ms J McCann: I wanted to ask about the Consumer Council coming in, because there was a query about the standards and about where the money for compensation would come from. It is a big issue for people.

165. The Chairperson: There are issues there, and you are quite right to highlight them. We have agreed to that, and the Committee office will schedule the oral briefings in the next few weeks.

166. Mr Cree: Can we just come back to the gas companies? I do not see any comments from Firmus. Is there any reason for that?

167. The Chairperson: I do not know whether there is a specific reason for that.

168. The Committee Clerk: Perhaps Firmus did not respond.

169. Mr Cree: Unbelievable.

170. The Chairperson: In relation to the two Bills, are members content to start next week's meeting in closed session to consider internal memos on delegated powers from the Examiner of Statutory Rules?

Members indicated assent.

171. The Chairperson: I do not think that there are any other issues.

23 September 2010

Members present for all or part of the proceedings:

Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Mr Leslie Cree
Mr Paul Frew
Mr William Irwin
Ms Jennifer McCann
Mrs Claire McGill
Mr Gerry McHugh
Mr Sean Neeson

Witnesses:

Mr John French }
Mr Richard Williams } Consumer Council
Mr Brian McHugh } Northern Ireland Authority for Utility Regulation

172. The Chairperson (Mr A Maginness): I welcome to the Committee Mr John French and Mr Richard Williams of the Consumer Council.

173. Mr John French (Consumer Council): The written evidence that we submitted to the Department and the Committee shows that we broadly support the proposals in the Bill to formalise existing relationships and strengthen current customer protection. However, we have some concerns about the Bill in areas such as the rights of access, the criminal offence of meter-tampering and guaranteed standards of service.

174. The Bill proposes that, as is the case with colleagues in the electricity sector, gas suppliers can access a meter if they believe that meter-tampering has occurred. Although the Consumer Council is against meter-tampering as it is a criminal activity and adds over £1 million to the customer's bill in Northern Ireland every year, we believe that safeguards should be in place to ensure that the gas companies, as is the case with the electricity companies, have the right level of suspicion before they can enter a property to check whether a meter has been tampered with. We believe that guidance needs to be given to the suppliers and to the justice of the peace to ensure that they follow that correct procedure. Customers, especially vulnerable ones, should not be left without gas or electricity during that process.

175. Unfortunately, we believe that meter-tampering is a symptom of the fuel poverty crisis in Northern Ireland at the moment. Many people must make the desperate choice between heating or eating, and the Consumer Council has seen an increase in the yearly number of calls for advice and help from people who are involved in meter-tampering. Citizens advice bureaux have also seen a steady increase in recent years.

176. Apart from that, our main concern is about the guaranteed standards of performance. We have always said that that is long overdue. The principle of guaranteed standards of service is not to ensure that consumers receive compensation for poor standards of service; rather, it is to incentivise the company to deliver high standards. Our major concern is that compensation payments should not come from other customers but from the pockets of gas companies. At the moment, we feel that the Utility Regulator has a potential conflict of interest because it must promote the gas industry while trying to provide consumer protection. It is time to review that dual role. Apart from those issues, we agree with what is set out in the Bill.

177. Mr Cree: Your comments on meter-tampering seem a bit ambiguous. What type of evidence do you envisage gas suppliers will have to produce before they can gain access to the premises of an awkward customer?

178. Mr French: It is based on reasonable suspicion. It is if they can prove that there is reasonable suspicion, for example, on a pay-as-you-go meter, that a customer has not been vending, buying over a correct period. Alternatively, when they go to read the meter and it looks incorrect or the figures —

179. Mr Cree: Sorry, what does "looks incorrect" mean?

180. Mr French: There would be obvious visual evidence that it had been tampered with.

181. Mr Cree: But you do not know what the evidence might be. Could it, for example, have been hit with a hammer?

182. Mr French: Exactly.

183. Mr Cree: Is it not much more likely that the meter could be bypassed, particularly a credit meter? I admit to having some knowledge of that.

184. Mr French: Yes.

185. Mr Cree: They would need to have reasonably quick access to find that out.

186. Mr French: Yes. However, we believe that there should be a case of evidence from the supply company that that has occurred and that the supply company can tell from average consumption in previous periods that the period in which it may have been bypassed looks irregular.

187. Mr Cree: I do not want to labour the point, but it is vital. For example, someone who is economising in the use of fuel will use less fuel than in a previous spell. Therefore, if I decide to disconnect my meter from time to time and get free gas, it is a reasonable case that no one will have to come and have a look at my meter.

188. Mr French: I suppose, in that case, if workers from the gas company had come to your door, you would have let them in. You would have had nothing to hide.

189. Mr Cree: That is the point. They have to be let them in. Do you agree?

190. Mr French: Yes. We are trying to say that, as it stands, the gas company can enforce its way in without reasonable suspicion.

191. Mr Cree: You talked about a justice of the peace. If workers appear at the door, they would need to have access. There is no use saying that they will come back next week when they have the authority of the justice of the peace, by which time I will have reconnected the meter. You look surprised.

192. Mr Richard Williams (Consumer Council): That brings us to the point about the guidance that is required. Perhaps ourselves, and certainly the gas suppliers, will need to give an indication of the kind of evidence that they will provide for having suspicion in the first place. If they see a pattern of use that indicates a suspicion, is that, in itself, sufficient to give rise to suspicion, or is there some other explanation for it? That is why there needs to be some guidance for a justice of the peace to make that decision. Guidance is required, rather than the supply company simply saying that it suspects meter-tampering.

193. Mr Cree: In practice, that will be very difficult. In another scenario, I could tee off ahead of the meter. Where would the evidence be then? I could tee off the supply coming into the house.

194. Mr French: It is giving people guidance. All we are asking is that gas or electricity companies have guidance on entering a property, and that they cannot do it off their own bats. They have to follow —

195. Mr Cree: Do you accept that there are occasions when they will have to get in as a matter of urgency?

196. Mr French: Yes. There are provisions for that in the Bill for such circumstances, although it is a slightly different matter if it is an emergency. There are provisions in the Bill for emergency access.

197. Mr Cree: Yes, but there is no evidence needed for that. They have a right to enter.

198. Mr Williams: Yes. The point is that a justice of the peace would need to be familiar with the issues that you are raising.

199. Mr Cree: That is where it gets very woolly. The circumstances are fine looking at it from a desktop situation. However, the reality on the ground is that people can be very adventurous and entrepreneurial in devising things that make the consumption of gas cheaper, but which also has serious risks, not just to them but to the whole row of houses.

200. Mr Butler: Obviously, the electricity suppliers have similar powers.

201. Mr French: Yes.

202. Mr Butler: Leaving aside what Leslie said about situations where there is a lot of expertise in bypassing the meter, what has been the experience of electricity suppliers with regard to people abusing the situation? Obviously, the gas suppliers will talk to their customers first of all if there are difficulties, and they will try to sort it out before they go into the house.

203. Mr French: Northern Ireland Electricity (NIE) has guidance for its staff about entering a property. It has agreed procedures. We are requesting the same for gas companies.

204. Mr Butler: Has NIE abused that? Is that a last resort for electricity suppliers? Are there any concerns about it?

205. Mr Williams: NIE has a specific revenue protection team that deals with those issues, and it provides some guidance. Far fewer complaints have come through to us about electricity meter-tampering issues than about gas issues. That is surprising given the number gas customers in Northern Ireland compared with electricity customers. It shows that the electricity supplier has formalised that system and has a team that offers guidance.

206. Mr Butler: We are concerned, especially in this economic climate, about that issue. When electricity suppliers were first able to gain entry to people's premises, there was a perception that they took that option first and cut people off rather than giving them options to get out of their debt. However, you said that it seems to be working, and I accept that.

207. Mr Williams: It was said that the companies should contact customers beforehand to deal with the issue. We want to emphasise that meter-tampering must be dealt with, and all the issues around the danger to the community are important. However, it is symptomatic of the current climate, in which people are getting into debt. We have worked with the Utility Regulator to try to develop best practice on debt management for the companies. They have to carry out a range of processes to manage debt, such as contacting customers early and identifying vulnerable customers. All those measures are important to reduce the number of people who are forced into meter-tampering.

208. Ms J McCann: Thanks very much for coming along today. There must be a requirement of reasonable suspicion, because people must be presumed innocent until they are proven guilty of meter-tampering. In some cases, people who are in arrears with gas payments use about £7 out of every £10 that they put into their meter to pay off arrears. Therefore, they only get £3 of gas for every £10 that they put in. That is a problem for people on low incomes. Meter-tampering is a dangerous practice that should not happen. There seems to be enough provision in the Bill to allow entry.

209. I have dealt with some constituents' cases that involve Phoenix Natural Gas. Your submission says that consumers should not be left without a supply of gas until it has been proven that meter-tampering has occurred. In some cases, meters are outside a home, and the families who have been accused of meter-tampering have said that they did not tamper with the meter. They had to take legal action because they were not believed. At what stage can the gas supply be turned off? People have claimed that they did not tamper with a meter, but their gas supply has been switched off or has been threatened to be switched off because they have not paid the projected cost of gas that Phoenix say they owe. It is not an actual cost, it is projected cost.

210. I am particularly concerned about families with young children. I read somewhere — I cannot remember where — that children under five should not be left in homes without heat. In a Housing Executive home, does the duty of care for those children sit with the Housing Executive or with Phoenix Natural Gas? Those children have not done anything wrong, and their parents have said that they have not done anything wrong. They have taken the legal channel, which is the only channel that they have left. Who has the ability to switch their gas supply off? Is it Phoenix or the Housing Executive?

211. Mr French: Those guidelines do not exist at the moment, which is why we are calling for clear procedures for the gas companies to follow if they suspect that meter-tampering has occurred. The current arrangements are quite ad hoc, and we want the gas companies to supply consumers until it can be proven that gas meter-tampering has occurred. I do not know where the duty of care lies for children under five in keeping houses warm.

212. Mr Williams: My understanding is that it that it would lie with social services, as it involves child protection issues.

213. Ms J McCann: You also mentioned in your paper that other consumers should not be charged for the actions of those who have tampered with meters and that it should be the companies. What is the situation now? Do other customers have to pick up those charges or do the gas and electric companies pay for those?

214. Mr French: Other consumers pay those charges. I suppose it is like shoplifting. The gas or electricity is consumed somewhere on the system and the overall consumer base must pay for it.

215. Mr Williams: You raised the point about meters being outside the properties and customers saying that it was not them who had tampered with those meters. We are concerned about the definition of the offence of meter tampering, which will have two areas of intent: a clear intention, which is fairly obvious; and "culpable negligence". It would require a legal expert to find out exactly what that term means, but it implies that a person would be guilty of that offence if they did nothing to stop another damaging their meter, and would, therefore, be negligent as a result of someone else's actions. It is quite a broad term to potentially criminalise someone under.

216. Ms J McCann: Are you saying that, if another person damages the meter of a customer, the customer would be liable?

217. Mr Williams: That may not be exactly the way that it will be interpreted. It will be down to a judge to determine what "culpable negligence" means, but it is quite a broad term, which is causing us concern.

218. Mr Cree: A way out of it would be for the customer to report it if someone else damaged their meter.

219. Mr G McHugh: You are welcome to the Committee, gentlemen. The intricacies of how to keep the electricity and gas suppliers right on tampering is a small issue for a lot of us when compared to fuel poverty or NIE and the gas suppliers cutting people off if they are unable to pay their bills. The deaths that occurred among the elderly and the under fives is a big issue that is always in the back of people's minds.

220. Generally, I find that the utility companies are — as was said about the banks yesterday — on another planet, when it comes to the payment of bills during a recession. They expect people to choose heating over eating and to ring-fence money from their household budgets to pay them while they potentially starve to death. They expect people to pay whether they are broke or not, and there seems to be no leeway with them. The government back the utilities up and allow them to bring in heavy penalties against people. That is the sides of it, including the Assembly. It seems to agree that people should ring-fence money to pay for utilities, despite the fact that they have no money to pay for anything else.

221. On the issue of bills and tampering: if someone is spending nothing on utilities it is easy enough to see that something is happening even if there are no visible signs of it. Usually, people get greedy, and they will not put the thing back on until the very last second. It should be easy enough to catch those who are offending. However, I may be wrong, because I do not know much about gas as there is no natural gas in the western area where I come from, and we are unlikely to have it either.

222. However, even NIE meter readers seem to just walk into an office or building, and they think that they have the right to do so. There is no particular courtesy about asking permission. I do not know whether that extends to the general public. However, they seem to have some sort of right to just walk straight into your house and have a look at the meter. They look regularly at electricity meters. Some people used to put bags of sugar or such things on their meter years ago to try to slow it down. I do not know whether that practice still goes on.

223. Will you say something about the poverty situation with regard to people being cut off by either of those providers and their inability to pay? Perhaps that alone would create suspicion. I know some elderly people who do not put their heat on at all. It could be -10°C when I go into the house, and they are sitting there trying to survive — and that was before the recession.

224. Mr French: As you probably know, the Department for Social Development reckons that fuel poverty in Northern Ireland affects around 50% of people, which one in two households and is one of the highest levels in western Europe. When the last official data was published the year before last, that equated to 1,000 excess winter deaths, which is the highest figure in western Europe. You can understand the crisis of people in fuel poverty who have to make the choice between heating or eating. It is a difficult choice.

225. A few years ago, the Consumer Council published 'In Control?', which looked at consumers who were self-disconnecting because they could not afford to pay for the energy. We can understand why people become involved with meter-tampering. However, we cannot condone it because, as I said earlier, it adds extra cost to the rest of the consumer base. People should pay for what they consume. Nevertheless, as my colleague said, a lot of it comes down to ensuring that customers know exactly what they owe. In many cases, people find themselves in an unexpected situation in which they have a high bill for one reason or another, which could be their own fault or the fault of the company misreading the meter. We have been working with the Utility Regulator to try to ensure that there are correct debt and disconnection procedures, and to ensure that the companies have a good understanding of the level of debt and try to minimise the level of bad debt in each company.

226. Mr G McHugh: How the companies carry out their business is important. I know of one instance when Northern Ireland Water was looking for £2,000 off someone who did not owe more than £65, and several letters were sent before I got to the bottom of it. We do not want such situations, especially with the elderly.

227. Mr Williams: Disconnection is a last resort. NIE Energy has a policy of no disconnection, but that is not the same for the gas industry over here as yet. However, we are aiming for that to be the policy.

228. Mr Frew: Most of the questions that I was going to ask have been answered. However, I want to tease out more information, if I may. You say that meter-tampering is, to some extent, a symptom of the crisis levels of fuel poverty in Northern Ireland. It is something that we, as public representatives, and the Consumer Council in its role, take very seriously, and so we should. It is never far from our minds. I admit, Leslie, that I have a certain degree of experience and knowledge of electricity meter-tampering.

229. Can you give a percentage of how many instances of meter-tampering are because of fuel poverty? Can you give us some detail on that? The question is similar to Mr McHugh's. Sometimes, people I know who have been involved in electricity meter-tampering are not so much needy as greedy. It is the Robin Hood mentality, when people try to get one over on the utility company. I am mindful of fuel poverty and of the problems that people face, but can you give some sort of measure of how endemic the connected problems of fuel poverty and meter-tampering are?

230. Mr French: We have only anecdotal evidence, and we agree that there will always be people who can pay but will not pay for gas and electricity. Those people need to be pursued because, as Mr Frew said, they try to get one over on the gas or electricity companies. From our call centres and from discussions with citizens advice bureaux, we have noticed an increase in incidents of meter-tampering in private areas. People are struggling and are making the choice that they cannot afford the electricity or gas.

231. Mr Frew: Most of the vulnerable people who are affected by fuel poverty might be elderly. I cannot imagine that an elderly person is able to organise tampering of a meter or construction work to bypass payments. Are the most vulnerable people in fuel poverty coming to you?

232. Mr French: There has been an increase in the involvement of single parents with young families. We have released statistics on who is most likely to be in fuel poverty. That is one of the most vulnerable groups.

233. Mr Williams: Anecdotally, we hear that the people who are involved do not always initiate the tampering. People often come to their house or to an estate and offer that service on the basis that it will cut their bill by a certain amount for a £50 or £100 payment. They make it difficult for people who are short of cash and who have young children. I am not saying that they should take that option. A case was put through to us yesterday of a woman who has been disconnected by the gas company. She suffers from Parkinson's disease and is the sole carer of a disabled child. That is not necessarily a typical case; however, it shows that people who should not be in that position are making the wrong choice.

234. Mr Irwin: Your submission says that the Consumer Council: "strongly advocates that the compensation payments awarded to consumers for failed delivery must come from the profits of the gas company."

235. If a gas company has to pay a large amount of money over a period of time for failure to deliver, would it not be difficult to ascertain whether the gas company has tried to pass that on?

It would be difficult to stop a company passing that on to the consumer because it would be hard to prove.

236. Mr French: Gas companies and NIE Energy use regulated tariffs. They are subject to scrutiny by the Utility Regulator, the Consumer Council and the Department of Enterprise, Trade and Investment (DETI). The Utility Regulator looks at the costs that the companies put through, and it would be hoped that, if it is on such a sizeable scale, it would be picked up.

237. Mr Williams: It might be more difficult with completely free, unregulated competitive tariff companies, because their costs are less transparent. It will definitely be more difficult to dig it out in that situation.

238. The Chairperson: Thank you very much. Am I right in thinking that what we are dealing with relates to clause 14?

239. Mr French: I am afraid that I am not able to answer that.

240. The Chairperson: I am slightly concerned. I just want to be clear about this in my own mind. Are you saying that, for a supply company to enter the premises, it needs reasonable suspicion?

241. Mr French: To enter the property, yes.

242. The Chairperson: That is the basic test: reasonable suspicion. Not a suspicion, but reasonable suspicion, which is a higher test than mere suspicion.

243. Mr French: Yes.

244. The Chairperson: So, there has to be some evidence of tampering or something of that nature; for example, the supply being unusually low. That does not appear in the Bill, in clause 14, as far as I can see. Is that contained in the Gas (Northern Ireland) Order 1996?

245. Mr French: I am sorry; I do not know. We can come back to you on that.

246. The Chairperson: I assume that it appears in the Gas Order; otherwise, where would it come from? Perhaps my colleagues can assist me identifying where it is in the Bill.

247. Mr Cree: It is not in clause 14.

248. The Chairperson: It is not in clause 14, and it does not seem to be in clause 10, as far as I can see, so it must be in the Gas Order. Perhaps we can clarify that. It is an important point, because reasonable suspicion is a good test in most circumstances and is applied in many different situations, so we need to clarify that that is based in statute.

249. In your submission, you also say that entry to the property against the occupier's permission should be a last resort. That is a very fine proposition and a very fine aspiration, but how can that be expressed that in the Bill? Are you suggesting that the term "last resort" be used in the Bill? I am not so certain that that means very much in law.

250. Mr French: I am not a lawyer —

251. The Chairperson: No, and I am not trying to trick you or anything like that; I am just asking you for your comment.

252. Mr French: I think that it refers to instances when the gas or energy company has asked the householder if it can enter their property and has been refused; then, as a final resort, it may get a warrant to enter the property.

253. The Chairperson: You say that guidance is needed for suppliers and the justices of the peace as to what is sufficient evidence to provide reasonable cause to suspect meter-tampering. Where is the justice of the peace reference in the Bill?

254. Mr French: In discussion with DETI,—

255. The Chairperson: Again, does that arise from the Gas Order?

256. Mr French: I do not know. We can find out and get back to you.

257. The Chairperson: If any colleagues have any views on this, let me know. I do not see it in the Bill.

258. Mr Williams: My understanding is that, if entry cannot be gained with permission from the occupier, a warrant would need to be obtained from a justice of the peace.

259. The Chairperson: I am not sure that I see reference to that in the Bill, but it may well be there and I have just not seen it, or it may well be in the Gas Order. We need to check that out. What you are saying is that there needs to be guidance for suppliers. Am I right in thinking that that would not be in the Bill as such but would just be advice coming from the Department?

260. Mr French: Yes.

261. The Chairperson: It could be some sort of code of practice. Therefore, we, as legislators, cannot really concern ourselves with that. All that we can hope is that there would be guidance and that it would appear at some stage from the Department. Would that satisfy you?

262. Mr French: Yes.

263. The Chairperson: The submission went on to state that consumers should not be left without a supply of gas until it has been proven that meter tampering has occurred. How would you implement that? It is a good aspiration and something that most people would support. However, if, for example, a gas company gains access and discovers that there has been meter-tampering, can that company not terminate the gas supply?

264. Mr French: Yes. That would present a health and safety issue, so the company would have to be able to terminate the gas supply.

265. The Chairperson: Do you find that to be reasonable?

266. Mr French: Yes.

267. The Chairperson: There are similar situations with electricity meters. Does legislation cover those?

268. Mr French: Yes.

269. The Chairperson: To your knowledge, are electricity meters covered in similar or different terms to what is proposed in the Bill?

270. Mr French: As far as I am aware, they are covered in similar terms.

271. The Chairperson: Is the test of reasonable suspicion also used with electricity meters?

272. Mr French: I am unsure about that.

273. The Chairperson: OK. It might be helpful if we knew what happens with the electrical supply to guide us in our consideration of those matters.

274. Ms J McCann: I know that many of your concerns cannot be addressed in the Bill but through guidance. However, do you feel that the definition of the offence by "culpable negligence" should be in the Bill? You listed it as a concern, and I assume that that definition is in the Bill.

275. Mr Cree: It is in clause 10.

276. Ms J McCann: Are you suggesting that an amendment should be made to that clause?

277. Mr Williams: I suggest that it is amended, because it appears to be too broadly worded.

278. Ms J McCann: That is something that we could factor in. The rest may be addressed through guidelines, but that part would have to be an amendment to the legislation.

279. The Chairperson: It probably would.

280. Mr Cree: It is actually in clause 10(1).

281. Ms J McCann: Is it? Is it amended already?

282. The Chairperson: Let us look at what it says. Clause 10(1) states: "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 and liable on summary conviction to a fine not exceeding level 3 on the standard scale."

283. The offence is established there.

284. Ms J McCann: I know, but there is concern that the term is too broad and that it might lead to the criminalisation of people too easily. That is maybe where we can come in to try to firm it up.

285. Mr Cree: The rest of the clause elaborates on the definition of the offence; we should read through it.

286. Ms J McCann: It is for individuals to decide on that issue. Committee members could propose their own amendments.

287. The Chairperson: They could. However, let us look at the remainder of the clause. Clause 10(2) states: "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."

288. Clause 10(3) states:

"Where an offence has been committed under subsection (1), in relation to a gas meter provided by a gas conveyer 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 conveyer may disconnect the premises and may remove the meter."

289. Clause 10(4) states:

"A meter removed under subsection (3) shall be kept safely by the gas conveyer until the Authority authorises its destruction or disposal."

290. That completes that clause. What is your point in relation to it, Ms McCann?

291. Ms J McCann: Guidelines are needed for suppliers and justices of the peace, and entry to the property must be a last resort. However, do you feel that that point could be firmed up a bit so that people are not criminalised? That is what I was trying to ask. Is there some way that an amendment could be made?

292. Mr French: Yes; it is too broad at the moment.

293. Ms J McCann: It is too broad at the moment.

294. The Chairperson: Do you think that the term "culpable negligence" is too broad to be included in the Bill?

295. Mr Williams: Yes. Further clauses that go into more depth and take the sting out of that may be one solution. However, as it stands, the definition of the offence is worded too broadly.

296. The Chairperson: Do you think that the term "intentionally damages" is sufficient to cover that problem?

297. Mr Williams: The definition of "intentionally" is quite clear. The suggestion behind "culpable negligence" —

298. The Chairperson: Do you think that that is a better way of expressing it than "culpable negligence", which might be a much wider offence?

299. Mr Cree: Surely, that covers third-party involvement. That is the difference here, but it is a job for another day.

300. The Chairperson: It is very useful to have your view on that.

301. Mr French: If the householder is involved in meter-tampering, what is in the Bill is fair enough. However, if the householder is unaware that meter-tampering has occurred, we feel that, at the moment, that person could be captured.

302. The Chairperson: I am trying to imagine a situation in which a householder says that someone can do what they want with a meter and damage or injury is caused as a result. Are you saying that that householder should not be penalised?

303. Mr French: No, because that householder told someone to go ahead and do something with the meter.

304. The Chairperson: Does that not let the householder off the hook?

305. Mr French: No; we are saying that that person should be charged.

306. Mr Williams: That person has been positive rather than passive in their action. "Culpable negligence" could include passive action.

307. The Chairperson: I do not want to be pernickety, but am I not being negligent if I tell you to go ahead and do whatever you want? If I am being culpably negligent, does the removal of that phrase not let me off the hook?

308. Mr Cree: Of course it does.

309. Mr Williams: Have you not also intentionally allowed someone to damage the meter? What is in the Bill covers that offence.

310. The Chairperson: I am not sure that I would be guilty of an offence. I did not intentionally damage the gas appliance. I did not do it personally.

311. Mr Williams: You intentionally allowed it to be damaged, which is what is stated: "intentionally...damages or allows to be damaged".

312. If someone comes to you and says that they will do something and you tell that person to go ahead and do it, you have intentionally allowed the meter to be damaged. Is that not sufficient?

313. The Chairperson: That is a fair point.

314. Mr Cree: It is not really for us to debate that; that is for another day.

315. In the case of third-party involvement in which wilful damage had nothing to do with the householder, that person, unless they report it, is also culpably liable because they know that it has happened. We are playing here. It must be much tighter than what has been suggested here this morning and afternoon.

316. The Chairperson: OK, there is that argument. We are grateful to you for raising it.

317. Ms J McCann: When will we go through clause-by-clause scrutiny?

318. The Committee Clerk: An extension has been granted until the end of November. Therefore, I imagine that clause-by-clause scrutiny will be undertaken in October.

319. The Chairperson: There is time to think about all of those issues. Perhaps, the Department could provide us with a copy of the Gas (Northern Ireland) Order 1996 and relevant guidance. Thank you very much, gentlemen. That is very helpful.

320. We will move on to oral evidence from the Northern Ireland Authority for Utility Regulation. The members' packs include letters from the Utility Regulator on the Energy Bill and a briefing paper from the Committee Clerk. The Committee will be briefed by Mr Brian McHugh, director of gas at the Northern Ireland Authority for Utility Regulation. You are very welcome. I invite you to make some opening comments.

321. Mr Brian McHugh (Northern Ireland Authority for Utility Regulation): Thank you, Chairman. We support the Bill strongly. We have worked with the Department to put it together. Some clauses are designed to fill gaps or to match measures that are in place for electricity. The

special administration regime is included because we believe that it is necessary in certain circumstances to have an extra tool in the toolkit if conveyance companies get into significant trouble.

322. Therefore, we welcome the Bill very much. When it is introduced, we will have work to do to implement aspects of it via licence modifications.

323. The Chairperson: Thank you very much indeed. I would like clarification on a couple of matters. A provision in the Gas Order allows for entry to premises when there is reasonable suspicion of tampering. Is that correct?

324. Mr B McHugh: Powers of entry are included in schedule 5 to the Gas Order, which states that there must be: "reasonable cause to suspect that there may be a danger to life or property".

325. However, a potential gap exists whereby if an authority suspects that a meter has been tampered with, but does not suspect danger to life or property, it does not have power of entry. The clause in this Bill intends to cover that.

326. The Chairperson: Which clause?

327. Mr B McHugh: Clause 14. Having listened to earlier conversations, I am not aware that reasonable suspicion is included in the current draft of the Bill. My understanding is that the current draft allows entry on the basis of potential damage to the meter; therefore, potential meter-tampering. Clause 14 does not state that there must be reasonable suspicion of danger to life or property. I do not see where it explicitly says that there must be reasonable suspicion of meter-tampering. Therefore, on the basis of this draft, any authorised person will be able to go to a justice of the peace and say, "I do not have reasonable suspicion of a danger to life or property, but I think that there has been meter-tampering and would, therefore, like to enter the property". However, I do not see the words "reasonable suspicion of metering-tampering" here.

328. The Chairperson: Could clause 14 cause difficulties in the future if it remains as it is? There is no specific reference to meter-tampering and reasonable suspicion. Therefore, a gas company that entered premises may not have the legal power to do so in such circumstances.

329. Mr B McHugh: I certainly agree that that should be reviewed. As regards the legal power, it is my reading that gas companies can enter premises to inspect the gas system and any gas fittings and that they do not necessarily need reasonable suspicion to do so. It is, therefore, maybe even broader. They can go to a justice of the peace and say that they have failed to get access to a property — the detail of that is in the Gas Order — and that they would like to enter the property because they have a complaint, I think that that is what it is referred to. The justice of the peace will then consider whether to give them the right of access.

330. The Chairperson: Where is the reference to the justice of the peace?

331. Mr B McHugh: It is in the Gas Order. Subsection 8 of clause 14 refers to paragraphs 5 to 8 of schedule 5 to the Gas Order. Those paragraphs deal with justices of the peace.

332. The Chairperson: That is where justices of the peace arise in the legislation?

333. Mr B McHugh: Yes. The gas company concerned must go to the justice of the peace with a complaint and request a warrant.

334. The Chairperson: My reading of clause 14, as presently drafted, is that there is a wider power for accessing or entering premises than simply doing so on the basis of reasonable suspicion of tampering.

335. Mr B McHugh: Yes. I am not a legal expert, but that is my reading of it.

336. The Chairperson: OK. Thank you for clarifying that. I also wanted you to advise the Committee on the matter of a code of practice. There is no code of practice, as such, in the legislation. Is that right?

337. Mr B McHugh: There is no code of practice.

338. The Chairperson: That is something that the Department could produce to advise gas companies, is that right?

339. Mr B McHugh: Potentially. The safeguards in place are the justices of the peace. A gas company needs to explain its complaint to a justice of the peace to get a warrant. There are also other requirements and safeguards, such as securing the premises when leaving and providing identification. Gas licences also place obligations on gas companies to provide identification and to ensure that whoever enters the property, be it an engineer or a gas engineer, has the necessary skills to do whatever it is that they are meant to be doing. Therefore, there are safeguards in place.

340. There is an issue about whether the licence is the right place to put in additional safeguards and whether the Consumer Council should agree those with the companies. However, I guess that such safeguards are non-binding because they are guidelines. That is something that can be considered. However, there are a number of safeguards in various places.

341. The Chairperson: OK. Are there any other questions? Mr Cree wishes to ask a question.

342. Mr Cree: Clause 10 —

343. The Chairperson: Sorry, Mr Cree; I did not realise that the Deputy Chairperson was due to speak first.

344. Mr Butler: Go ahead.

345. Mr Cree: Clause 10 is about meters being taken from premises. It says that a meter removed: "shall be kept safely by the gas conveyor until the Authority authorises its destruction or disposal".

346. Why not add "its repair". What do you think of that? It seems a bit silly to throw it away if it can be repaired.

347. Mr B McHugh: Yes, that is true.

348. Mr Cree: I meant to mention that earlier, Chairperson. I believe that that would help.

349. Mr Butler: Thank you for your presentation, Brian. I want to ask about compensation payments and whether they should come out of the customer base. The Consumer Council referred to that. Where is the incentive, if compensation payments are not coming out of the gas companies' profits? Is there a conflict of interest with the Utility Regulator? There is an intention to protect customers while trying to promote the gas industry.

350. Mr B McHugh: Yes.

351. Mr Butler: It is a grey area.

352. Mr B McHugh: It has been important up to now, and it will be interesting to discover what it actually means. We will have to grapple with it when the time comes to make decisions. On the specific issue, we see the promotion of the gas industry to be consistent with ensuring that customers get a good service. It is important that, as part of growing the gas industry, it has a good reputation. It would not necessarily be inconsistent with that duty. There is a precedent in the electricity business in which the shareholders take the risk for what we call guaranteed standards when it comes to compensation payments. The Utility Regulator has determined that precedent. Once the Bill is passed, we will consult on the guaranteed standards and on who should pay for them. There is a precedent, and we would need strong reasons why that would not —

353. Mr Butler: What happens in the electricity industry? Do compensation payments come out of its profits?

354. Mr B McHugh: Yes, they come out of its profits.

355. Mr Butler: There obviously would be no incentive if they were not taken out of the profits. The gas industry might decide to charge everyone else a percentage.

356. Mr B McHugh: We will go through the regulated companies' cost bases line by line. There is a question as to how unregulated companies pass those costs on. The Energy Bill is very similar to legislation in GB, where the supply companies are unregulated. There is competition, so there is no need to regulate them. There is a question there.

357. Mr Butler: They pass those costs on.

358. Mr B McHugh: Ofgem, which is the regulator in London, would argue that it is a competitive matter. Lower compensation payments bring a competitive benefit, so there is a balancing act, but it is not as black and white in the case of unregulated companies.

359. The Chairperson: In summary then, this is a piece of filling-in legislation.

360. Mr B McHugh: Yes. Apart from the special administration section, which is new, and which applies to the electricity and gas industries. It is important, but the other parts of the Bill bring the gas industry into line with the electricity industry or clarify some other matters.

361. The Chairperson: Essentially, the same legislative provisions would apply to the electricity industry now as will apply to the gas industry in future if the Bill is passed.

362. Mr B McHugh: Yes. That is true for the standards of performance for the deemed contracts and for powers of entry. Those are all in place in the electricity industry. I imagine that the drafting in clause 14 is probably taken from the regulations that relate to the electricity industry. That may be why there is no mention of reasonable suspicion in the Bill; there is no mention of it in the legislation that applies to the electricity industry.

363. The Chairperson: We need to clarify that. Thank you very much; you have been very helpful.

14 October 2010

Members present for all or part of the proceedings:

Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Mr Leslie Cree
Mr Paul Frew
Mr Paul Givan
Mr William Irwin
Ms Jennifer McCann
Dr Alasdair McDonnell
Mr Gerry McHugh

Witnesses:

Mr Fred Frazer
Ms Susan Stewart Department of Enterprise, Trade and Investment

364. The Chairperson (Mr A Maginness): Our discussion on the Energy Bill will be recorded by Hansard. I remind members that this session involves initial consideration of the clauses in the Bill. The Committee can raise concerns or matters that arose during the consultation. The departmental officials are on standby to answer any queries.

365. I ask the Clerk to take the Committee through the clauses and the issues that were raised about each clause, after which I will ask members whether they want to question departmental officials or whether they are content that there are no other issues with the clause.

366. Ms J McCann: I still have a difficulty with the culpable negligence provision in clause 10, which I raised with the Committee previously. I see that that provision has been retained.

367. The Chairperson: We will go through the clauses and note your points.

368. The Committee Clerk: I intend to take the Committee through the Bill in the order of the clauses, with the exception of clause 14, which I intend to deal with prior to clause 10. I will do that because the Department has agreed to an amendment to clause 10 based on a recommendation from the Committee that was raised under clause 14.

369. Part 1 is about gas, and clause 1 is entitled "Standards of performance in individual cases". The Consumer Council is of the view that compensation should be paid to consumers where guaranteed standards of performance are not met. It believes that payments that are made under such circumstances should be recovered from the profits of energy companies. The Department said that it will work with the Consumer Council and the Utility Regulator on the outworking of guaranteed standards of performance and that all proposals will be subject to public consultation. The Department further said that although firm proposals have yet to be developed, the guaranteed standards provision is expected to operate in the gas sector as it does in the electricity sector. The Utility Regulator informed the Committee that compensation payments in the electricity industry come out of the pockets of the companies.

370. Clauses 2 to 9 deal with standards of performance; no issues or concerns were raised during consultation on those clauses.

371. Clause 14 concerns the statutory powers of licensed gas companies to enter premises. The Consumer Council felt that gas licence holders should have the same access rights as electricity

licence holders to enter premises if they suspect that meters or fittings have been tampered with.

372. The Department informed the Committee that the provisions regarding powers of entry to properties by gas companies is in line with the provisions for the electricity industry in Northern Ireland in the Electricity (Northern Ireland) Order 1992. The Department said that a gas company that wishes to enter a premises must obtain the consent of the occupier. If that consent is not obtained, the gas company must be able to demonstrate reasonable suspicion and thereby satisfy a justice of the peace that there are grounds to warrant entry to a customer's premises.

373. If, upon inspection, a major gas company suspects that a meter has been tampered with, the meter will be removed for testing and, under normal circumstances, will be replaced with a pre-payment meter that has a debt recovery function to ensure that the customer's gas supply is not interrupted.

374. The Committee had concerns that the terms "reasonable suspicion" and "meter tampering" did not appear in clause 14. The Utility Regulator's representative agreed that a gap may exist whereby an authority that suspects that a meter has been tampered but does not suspect that there is a danger to life or property does not have power of entry.

375. On legal advice, the Department responded that it would not be necessary to change the wording of the Bill because the current wording gives rise to a power of entry to carry out inspections, which is not limited by reference to any particular purpose for the inspection.

376. Therefore, the Department believes that there is adequate provision in clause 14 to cover meter tampering. However, the Department has re-examined clause 10 to ensure that its provisions for damage to a gas plant fully encompass meter tampering and has concluded that it would be desirable to amend clause 10(1) to refer specifically to tampering with gas meters. The proposed amendment will be referred to when the Committee considers clause 10.

377. Mr Cree: The Department makes the point that gas undertakers should be treated in the same way as electricity undertakers when it comes to right of entry. If an occupier refuses entry, the gas company has to go to a justice of the peace to furnish reasonable doubt. However, with electricity, the danger is to one house; with gas, it is to much more than one. That issue is not covered in the Bill. By allowing for refusal of entry, an occupier is allowed time to do something about an illegal practice. I am still uneasy about that.

378. Mr Fred Frazer (Department of Enterprise, Trade and Investment): Mr Cree made the point that gas is more dangerous than electricity when it comes to tampering or faults, but there are existing powers of entry in the Gas Order to deal with emergencies. We feel that the proposal for electricity industry compliance is reasonable; however, do you wish us to go further than that with the gas industry?

379. Mr Cree: The existing powers to deal with exceptional or emergency situations are fine. However, if the gas company suspects that an illegal practice, such as by-passing a meter, is going on and sends an employee to the household involved, the occupier can say: "I am sorry; I am not letting you in." That puts the occupier on notice to fix whatever it is that they have been doing and gives them the time to correct it. Even though there are risks involved in doing such work, it happens, and clause 14 is an open door to allow it.

380. Mr Frazer: I take your point. The difficulty is in considering what is reasonable — the citizen has rights as well. It could be difficult to put in place what is basically a right of access from the initial contact.

381. Ms Susan Stewart (Department of Enterprise, Trade and Investment): In considering the Bill, we also had to consider human rights issues, one of which is the right to private life.

382. Mr Cree: The right to life also applies to the people living next door; they have to be taken into consideration. If there is an unsafe, illegal practice, it is important that action be taken at the earliest possible moment. The Bill allows the perpetrator of such an act time to correct that. That is a major defect.

383. The Chairperson: What do you say to that, Mr Frazer?

384. Mr Frazer: We will have to take legal advice on that.

385. Mr Cree: It is important to get it right.

386. Mr Frazer: It certainly is. We are happy to look at that again and to take legal advice on the matter. The proposed provisions would be much harsher for the gas industry than for the electricity industry. There are also human rights considerations.

387. Mr Cree: Gas is more dangerous than electricity.

388. Mr Frazer: I understand what you are saying.

389. Ms Stewart: We also have to consider reasonable suspicion; we must take both issues into consideration.

390. The Chairperson: Would the time lag that Mr Cree mentioned also apply if an electricity meter had been interfered with?

391. Mr Frazer: If someone suspected that something untoward was going on at a property but were refused access to inspect the meter, there would be a time lag, because that person would have to go to a justice of the peace to get a warrant. You are absolutely right; there would be a time lag.

392. The Chairperson: Does that time lag mean that someone could rectify any interference with an electricity or gas meter?

393. Mr Frazer: Absolutely. I understand what you are saying.

394. The Chairperson: Mr Cree's point is that it is more dangerous to allow interference to continue with a gas meter than an electricity meter.

395. Ms Stewart: Provisions in the Gas Order 1996 ensure that that can be overridden if there is a gas emergency or a danger to life.

396. Mr Cree: With respect, that is designed to cover a different situation.

397. Mr Frazer: We can look at the provisions in the corresponding Act in GB, where the gas industry is much more mature because gas has been available for much longer. We are happy to look at what is in that legislation.

398. The Chairperson: That would be very helpful.

399. Mr Butler: I do not know how widespread this is. Are you trying to make the Bill compatible with the Electricity Order 1992?

400. Mr Frazer: Broadly speaking, yes.

401. Mr Butler: That is going back quite a few years.

402. Ms Stewart: There have been subsequent amendments to it.

403. Mr Butler: Therefore you are trying to make the Energy Bill as compatible as possible with the Electricity Order.

404. Mr Frazer: Yes. It has broadly similar provisions if tampering or any other damage to meters that could cause a risk is suspected.

405. Mr Butler: Have there been amendments over the years?

406. Ms Stewart: Yes.

407. Mr Frazer: What we propose is very similar to what is in the Electricity Order; we do not propose at this moment to go further.

408. Mr Butler: Could amendments to the Energy Bill be out of sync with the Electricity Order?

409. Ms Stewart: No.

410. Mr Frazer: Well, —

411. Mr Butler: Will the gas company face more restrictions than the electricity company? Are you trying to create a level playing field for both?

412. Mr Frazer: Take Mr Cree's concerns. If the Bill was amended to make it easier for gas companies to gain access to a property in the event of a concern about interference with plant, that would be more stringent than the electricity arrangements.

413. Mr Butler: Mr Cree's point was that, unlike electricity, gas can blow up a whole street.

414. Mr Frazer: I understand. However, such an amendment would be more stringent. Therefore we have undertaken to investigate the GB legislation.

415. The Chairperson: Is the general intent to mirror the electricity provisions?

416. Mr Frazer: That is correct.

417. Mr McHugh: We are heading for 2020. Is it easier to produce legislation rather than the technology to stop tampering? Could you not go into a property where tampering is suspected and insert something to end it in that house? That would add to the cost, but I am thinking of the threat to disconnect, which exists for Northern Ireland Water if a bill is not paid on time. Private enterprise has to do without getting paid at all. That is the difference. Are we legislating because it is easier than developing technology to solve those issues?

418. Mr Frazer: I imagine that meters and associated plant are designed not to be interfered with easily. However, I suppose that the right person with the right skills could interfere with

them. Gas companies can switch off supplies, but that is something that they do not necessarily want to do.

419. It is a question of having grounds for suspicion. I am sure that they would want to inspect a gas plant annually whether to take money from a meter or to check the meter to ensure that it is working properly or it may need upgrading. Such access is available.

420. Mr McHugh: I am cautious about making it too easy for companies to walk across people's doorsteps unnecessarily because of the few who are tampering.

421. Mr Frew: Could gas companies seek permission from a justice of the peace without a householder's knowledge, or do they first have to approach a householder to gain entry before seeking such permission?

422. Mr Frazer: The legislation proposes that the process would be to approach the householder first.

423. Mr Frew: That would remove the notice for a householder to rectify any dangerous works that they had undertaken.

424. Mr Frazer: I suppose that many such requests would put extra work on the judiciary, although we did not discuss that with the Court Service. However, a reasonable process seems to be in place, whereby people are asked for access. A company getting a warrant would be a last resort, notwithstanding Mr Cree's comments.

425. The Committee Clerk: I want to confirm that the Department will come back to the Committee with further information about the GB legislation.

426. Mr Frazer: Yes, we will.

427. The Chairperson: We move to clause 10.

428. The Committee Clerk: Clause 10 is entitled "Damage to gas plant". The clause establishes a criminal offence in respect of persons who intentionally or negligently damage gas equipment. It also allows gas companies to disconnect premises and/or remove gas meters in those circumstances.

429. The Consumer Council is concerned about the term "culpable negligence" in the Bill. It stated that it implies that a person would be guilty of that offence if they did nothing to stop another person damaging their meter and, therefore, would be negligent as a result of someone else's actions. The Office of the Legislative Counsel (OLC) has informed the Department that "culpable negligence" denotes a high degree of negligence that merits criminal sanctions and is more commonly referred to as "gross negligence". The OLC has advised that, were the clause to be amended, gas provisions would be out of line with electricity legislation. Therefore, the Department considers it desirable to retain clause 10(1) as originally drafted.

430. However, the Committee will note that, as stated earlier, the Department has agreed to an amendment to clause 10(1) to specifically refer to tampering with meters. Following a suggestion from the Committee that clause 10(4) should be amended to make provision for a gas meter to be repaired having been removed from premises, the Department intends to bring forward an amendment to clause 10(4) to that effect. The proposed amendments to clause 10 are at annex 1 of the Department's response to the Committee. Members may wish to consider

whether they are content, first, with the proposed amendments to clause 10 and, secondly, with clause 10 as amended.

431. The Chairperson: Let us look at the proposed amendments to clause 10, which are shown in red at annex 1.

432. Ms J McCann: The term "culpable negligence" will stay in clause 10; is that right? Clause 10(1) says:

"damages or allows to be damaged any gas plant provided by a gas conveyor".

433. I believe that that can happen without the knowledge of the person who owns the house with the meter. For instance, in a lot of social housing, gas meters are outside the house in the garden. By leaving the term "culpable negligence" in, it can potentially criminalise someone through no fault of their own. I do not know whether that needs to be in there. I want some clarity on that.

434. Ms Stewart: We were advised by the OLC that "culpable negligence" is better known as "gross negligence". It is more a case of, if a meter is outside a property, a person should do everything that they can to keep their meter secure. It should be locked, and so on. If someone leaves it open, that could be seen as culpable negligence. However, if it is locked and someone breaks it open, that may not be culpable negligence.

435. Ms J McCann: I understand what you are saying, and I appreciate that explanation. I am not talking about meter-tampering; I am talking about damage to the meter. That can happen without the person's knowledge. Different people will have different interpretations of "culpable negligence". Is it not enough to include reference to a person who "intentionally" damages the meter and to leave the term "culpable negligence" out? I do not understand the insistence on that term.

436. Mr Frazer: It keeps the provisions in line with electricity legislation. The OLC has commented to us that the clause could be amended to include a reference to "intentional damage". However, that would be different from the electricity industry.

437. Ms Stewart: It would result in there being two different approaches.

438. Ms J McCann: I appreciate that you are trying to keep the provisions standard across the board, but I still have difficulty with the term.

439. The Chairperson: I understand the point that you make, Ms McCann, and you make it very well. However, the OLC also said that the water legislation goes even further and penalises mere negligent damage to water fittings. Clause 10 relates to a much higher degree of negligence. The point is that some culpable negligence needs to be included to prevent people being extremely careless in case greater harm is caused. I am not saying that a whole street might blow up as a result of extreme carelessness, but, if there is something that could cause an even greater harm to the community, culpable negligence would have to be included. That refers to a high degree of negligence, not a low degree of negligence, as there is in the provisions for water installations. That is the argument. Ms McCann has made her point, and we will be able to return to the issue.

440. The Committee Clerk: The next phase will be formal clause-by-clause scrutiny of the Bill. I suggest that any issues are sorted out as quickly as possible. It was intended that we would have formal clause-by-clause scrutiny of the Bill in the week that follows the Halloween recess.

However, the Committee will now have to wait until the Department responds. The Bill's Committee Stage has been extended until 29 November, so timescales are quite tight.

441. The Chairperson: We will return to the issue, Ms McCann. If there is no agreement between the Department and the Committee or within the Committee on the issue, we will vote on the matter.

442. Mr Frew: We do not have a problem with the clause.

443. The Chairperson: The points have been well made, and we can return to them in due course.

444. I ask the departmental officials to confirm that the Department intends to bring the amendments as worded during the Consideration Stage of the Bill.

445. Mr Frazer: Yes, it does.

446. I want to check that the Committee is also aware of the minor amendment to do with the name of the Utility Regulator in clause 35. The body was wrongly called the Authority for Energy Regulation in the first draft of the Bill; it should be the Authority for Utility Regulation. So the word "Energy" will be replaced with "Utility". When we respond to the other matters, it might be helpful for us to provide our list of the amendments.

447. The Chairperson: That would be very helpful and would complete all of the amendments.

448. Mr Frazer: We discussed that during our previous evidence session with the Committee, but I do not think that it was confirmed in writing. The discussion is in the Hansard report of that meeting, but it may be useful to confirm it in writing.

449. The Chairperson: It would be good if you could confirm that in writing. Thank you, Mr Frazer.

450. We move to clause 11.

451. The Committee Clerk: There were no issues or concerns raised about clause 11 during the consultation.

452. Clause 12 deals with deemed contracts. The Utility Regulator's representative informed the Committee that that provision is designed to ensure continuity of supply for customers in cases where a signed contract does not exist between the customer and the supplier. During the Department's consultation on the Bill, the Consumer Council stated that customers on deemed contracts should be charged the published tariff, must be free to shop around and should be provided with a copy of the deemed contract. It further stated that domestic customers on deemed contracts should not be prevented from switching suppliers if they are in debt, in the same way that domestic contracted customers are not prevented from doing so.

453. The Department responded that:

"the proposed provisions will place a duty on suppliers to make, and revise when appropriate, a scheme for determining terms and conditions for deemed contracts. The terms and conditions made by suppliers must be published in advance and sent to the Utility Regulator and the Consumer Council for Northern Ireland.

"Further, the proposed regime will provide the Utility Regulator with the power to make licence modifications for the purposes of the deemed contracts regime."

454. In its response to the Committee's call for evidence, the Consumer Council stated that it was content with the Department's response to the issues that it had raised.

455. No issues or concerns were raised about clause 13 — "Modification of conditions of gas supply licences in relation to deemed contracts" — or clause 15 — "Storage of gas" — during consultation.

456. Clause 16 — "Appointment of meter examiners" — removes the current restriction that meter examiners must be members of the Utility Regulator's staff and allows the Utility Regulator to arrange with an appropriate body for the appointment of meter examiners from wider sources.

457. In response to public consultation by the Department, the Consumer Council stated its belief that the responsibility for meter testing should reside not with the gas industry but with an independent body. The Department responded that that was already the case under the Gas Order and that that requirement should not be changed. In its response to the Committee's call for evidence, the Consumer Council stated that it was content with the Department's response to the issues that it had raised.

458. Mr Cree: I take it that the intention of clause 16 is that the meter manufacturer may well be that agent.

459. Ms Stewart: It will be the National Measurement Office, which operates in GB. I think that the Utility Regulator already outsources the work to them. It will be done by a body such as that.

460. Mr Cree: Is it independent?

461. Ms Stewart: Yes.

462. The Committee Clerk: In relation to Part 2 of the Bill — "Special administration regime for protected energy companies" — no issues or concerns were raised about clauses 17 to 23 during consultation.

463. Clause 24 — "Restrictions on voluntary winding up" — prevents a protected energy company from voluntarily winding itself up without the permission of the court, and it prevents the court from granting permission unless notice has been served on the Department and the Utility Regulator. As a result of a suggestion made by Northern Ireland Electricity to the Committee, the Department also intends to move a minor drafting amendment to clause 24(4) at Consideration Stage. That involves changing "an application for leave" to "an application for permission" with regard to a voluntary winding up. The Office of the Legislative Counsel has agreed that that minor technical amendment is warranted.

464. The amendment is included in the Committee Clerk's briefing paper for members, and it reads:

"Clause 24, page 16, line 8, leave out 'leave' and insert 'permission'."

465. Members may wish to consider whether they are content with the proposed amendment.

Members indicated assent.

466. The Chairperson: We move to clause 25.

467. The Committee Clerk: I think that the departmental officials have already indicated that they will be bringing forward an amendment to clause 25. Is that the case?

468. Ms Stewart: That is clause 35.

469. The Committee Clerk: Sorry, clause 35. Clauses 25 to 33 relate to a special administration regime for protected energy companies. No issues or concerns were raised about clauses 25 to 33 during consultation.

470. No issues or concerns were raised about clause 34 during consultation. The Department has indicated that it will be bringing forward an amendment to clause 35, which the Committee can consider at a later stage. No issues or concerns were raised about clauses 36 and 37 or the schedule during consultation.

471. The Department will come back to the Committee in relation to clauses 10, 14 and 35.

472. The Chairperson: Thank you very much. We can conclude at this point. We will commence the formal clause-by-clause scrutiny at a future date.

4 November 2010

Members present for all or part of the proceedings:

Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Mr Paul Frew
Mr Paul Givan
Mr William Irwin
Ms Jennifer McCann
Mrs Claire McGill
Mr Gerry McHugh

Witnesses:

Mr Fred Frazer
Ms Irene McAllister Department of Enterprise, Trade and Investment

473. The Chairperson (Mr A Maginness): I invite the Committee Clerk to take the Committee through the issues that have been raised in relation to clauses 10, 14 and 35. For each clause, when the Clerk has outlined the conclusions on issues raised during consultation and the Department's response, I will ask members whether they have any further issues.

474. The Committee Clerk: Clause 10, entitled "Damage to gas plant", establishes a criminal offence in respect of persons who intentionally or negligently damage gas equipment. It also allows gas companies to disconnect premises and/or remove gas meters in those circumstances.

475. The Consumer Council is concerned about the term "culpable negligence", because it implies that a person is guilty of an offence if they do nothing to stop another person damaging their meter. Therefore, they would be negligent as a result of someone else's actions. Following consideration of the draft Bill at the meeting on 14 October, there were still some concerns about that aspect of clause 10. In its response to the Committee, which is included in members'

papers, the Department reiterated its position that the Office of the Legislative Counsel (OLC) believes that "culpable negligence" denotes a high degree of negligence and merits criminal sanctions. It is more commonly referred to as gross negligence. The OLC advised that amending the clause would result in gas provisions being out of line with electricity legislation. Therefore, the Department considers it desirable to retain clause 10(1) as originally drafted.

476. The Committee agreed to ask the Consumer Council for its views on the Department's response. The Consumer Council's view is that, to justify its inclusion in the Bill, the term "culpable negligence" requires clarification about how it would be applied in practice. The Committee Office suggested to the Department that it may be helpful to provide a definition of the term "culpable negligence", and DETI and energy industry officials sought further advice from the OLC on the issue. They were advised that there is no precise legal definition of "culpable negligence", which denotes a high degree of negligence, merits criminal sanctions and is perhaps more commonly referred to as gross negligence.

477. Also at the meeting on 14 October, the Committee noted that the Department had agreed to amendments to clause 10(1). The Department intends to move those amendments at Consideration Stage. The proposed amendment to clause 10 is in annex 3 of the Department's response to the Committee, and members may wish to consider whether they are content, first with the proposed amendment to clause 10 and, secondly, with clause 10 as amended.

478. The Chairperson: Are there any issues arising?

479. Ms J McCann: Although I am not going to go into it again, I still have a difficulty with "culpable negligence". I think that it should be "intentional damage" only.

480. The Chairperson: OK. You have expressed that view on previous occasions. What is the best way to proceed? Mr Frazer or Ms McAllister, do either of you have a view on that?

481. Mr Fred Frazer (Department of Enterprise, trade and Investment): If it is of any help to the Committee, we had to think about the practical outworkings of that clause, and we spoke to the respective gas companies. You mentioned the OLC response that we provided and the fact that there is no specific definition. However, in line with the OLC response, our understanding is that "culpable negligence" is the same as "gross negligence". The gas companies advised us that the police, rather than the gas companies, will take any prosecutions. There must be sufficient evidence to take a case of culpable negligence against someone, and, to be convicted of it, a significant degree of negligence must be proved. The gas companies consider that it would be difficult to pursue a householder or tenant if damage was done to their gas plant if it was external to a property or in an open or common area in a block of apartments or flats. If the meter was in such an open area, any damage could be the result of vandalism and it could not be proved that the owner of the meter had caused that damage, and that is also the case for external meters. The gas companies have advised us that if damage was caused to someone's meter, they would expect that damage to be reported to the proper authorities and they would understand and take that into account.

482. Our understanding is that the prosecutions are taken by the police rather than the gas companies, which only pursue cases of restitution of costs for non-payment of gas. I do not know whether that is helpful to the Committee in trying to understand the practicalities.

483. The Chairperson: Ms McCann, you heard the response from the Department officials. Are you still minded to proceed in the way that you suggested?

484. Ms J McCann: Yes.

485. The Chairperson: OK. There are two options: we can put the matter to a vote today; or Ms McCann could bring an amendment at Consideration Stage to delete the phrase "culpable negligence" from the clause.

486. Ms J McCann: I could do both.

487. The Chairperson: You could. If you were to lose the vote in the Committee today you could table an amendment at Consideration Stage. We could proceed to a vote now.

488. The Committee Clerk: The vote will be taken when we move to formal clause-by-clause scrutiny of the Bill.

489. The Chairperson: Yes. Members should be aware that that vote will be taken. We will proceed with the rest of the briefing.

490. The Committee Clerk: Clause 14 deals with powers of entry. That clause concerns the statutory powers for licensed gas companies to enter premises. At its meeting of 14 October, the Department addressed the Committee's concerns about the terms "reasonable suspicion" and "meter tampering". The Department responded that, on the basis of legal advice received, it believes that it is not necessary to change the wording of the Bill, as the current wording gives rise to a power of entry to carry out inspections that is not limited by reference to any particular purpose for the inspection.

491. Concern was also raised at that meeting about the potential danger of alerting an occupier to the fact that permission would be sought from a justice of the peace to enter premises and determine whether a gas plant was interfered with. In its response, the Departments stated that the Gas (Northern Ireland) Order 1996 stipulates that when a gas company applies for a warrant to enter premises, the justice of the peace must be satisfied that:

"the consent of the occupier has been refused or seeking that consent would defeat the object of the entry".

492. OLC has confirmed that the existing provision provides that a gas company does not need to inform the occupier if to do so would defeat the purpose of entry. In such a case, the gas company can seek to obtain a warrant under clause 14(1)(a) and enter the premises without any advance notice to the occupier.

493. The Chairperson: Are there any matters arising?

494. Mr Frew: That is common sense and a good tool. Leslie Cree and I spoke about that last week.

495. The Chairperson: Are members content?

Members indicated assent.

496. The Committee Clerk: Clause 35 is entitled "interpretation". The Department informed the Committee that it intends to bring forward a minor drafting amendment to clause 35 to correctly reflect the name of the Northern Ireland Authority for Utility Regulation. It is as follows:

"In clause 35, page 23, line 40, leave out 'energy' and insert 'utility'."

497. The Chairperson: Is that agreed?

Members indicated assent.

498. The Chairperson: I will now move through each clause and the schedule and seek the Committee's position on each.

499. Is the Committee content with clauses 1 to 9 as drafted?

Clauses 1 to 9 agreed to.

500. The Chairperson: We are at clause 10. I will read out the amendment that is proposed by Ms McCann to clause 10. It states:

"In clause 10, page 6, line 40, leave out 'or culpable negligence'."

501. The question is that the amendment be made. Will colleagues indicate which way they want to vote?

502. Mr Frew: If we leave out "or culpable negligence", what will go in its place?

503. Ms J McCann: "Intentionally damages" is already there.

504. The Chairperson: I will just go through this again to reflect the amendment. The amendment proposed is: In clause 10, page 6, line 40, leave out "or culpable negligence". The Question is that the amendment be made.

The Committee divided: Ayes 4; Noes 2.

AYES

Mr Butler, Ms J McCann, Mrs McGill, Mr McHugh.

NOES

Mr Frew, Mr Givan.

Amendment accordingly agreed to.

505. The Chairperson: The amendment has been agreed by the Committee. The question is that the Committee recommends to the Assembly that clause 10 be amended as agreed by the Department as follows.

506. In clause 10, page 6, line 40, leave out "negligence" to "conveyor" in line 41 and insert:

"(a) damages or allows to be damaged any gas plant provided by a gas conveyor

(b) alters the index of any meter used for measuring the quantity of gas conveyed or supplied by a gas conveyor or a gas supplier; or

(c) prevents and such meter from duly registering the quantity of gas conveyed or supplied.

507. In clause 10, page 7, line 3, leave out subsection (1) and insert subsection (1A).

508. In clause 10, page 7, line 14, leave out "or disposal" and insert "disposal or repair".

509. Are Members agreed?

510. Mr Givan: What is it that we are agreeing to? Sorry, I am not quite with you.

511. The Chairperson: Effectively, the Committee raised points about meters and interference with meters. The Department took on board some of the points that the Committee made and, as a result, came back with the amendments that I just read.

512. Mr Givan: So this is just agreeing to what the Department said that it would agree with the Committee on?

513. The Chairperson: Yes.

514. Mr Givan: Thank you.

515. The Chairperson: Are members content?

Members indicated assent.

Clause 10, as amended, agreed to.

516. The Chairperson: I will move on to the next part of the Bill. Is the Committee content with clauses 11 to 23 as drafted?

Clauses 11 to 23 agreed to.

517. The Chairperson: The Question is that the Committee recommends to the Assembly that clause 24 be amended as follows, as proposed by the Department: Page 16, line 8, leave out "leave" and insert "permission".

Amendment agreed to.

Clause 24, as amended, agreed to.

518. The Chairperson: Is the Committee content with clauses 25 to 34 as drafted?

Clauses 25 to 34 agreed to.

519. The Chairperson: The Question is that the Committee recommends to the Assembly that clause 35 be amended as follows, as proposed by the Department: In page 23, line 40, leave out "energy" and insert "utility".

Amendment agreed to.

Clause 35, as amended, agreed to.

520. The Chairperson: Is the Committee content with clauses 36 and 37 as drafted?

Clauses 36 and 37 agreed to.

521. The Chairperson: Is the Committee content with the schedule as drafted?

Schedule agreed to.

522. The Chairperson: Is the Committee content with the long title as drafted?

Long title agreed to.

523. The Chairperson: The draft report of the Bill will be considered at next week's Committee meeting.

Appendix 3

Written Submissions

Advice NI response

June 2010

Background

Advice NI is a membership organisation that exists to provide leadership, representation and support for independent advice organisations to facilitate the delivery of high quality, sustainable advice services. Advice NI exists to provide its members with the capacity and tools to ensure effective advice services delivery. This includes: advice and information management systems, funding and planning, quality assurance support, NVQs in advice and guidance, social policy co-ordination and ICT development.

Membership of Advice NI is normally for organisations that provide significant advice and information services to the public. Advice NI has over 70 member organisations operating throughout Northern Ireland and providing information and advocacy services to over 100,000 people each year dealing with over 227,000 enquiries on an extensive range of matters including: social security, housing, debt, consumer and employment issues. For further information, please visit www.adviceni.net.

General

Advice NI notes the focus of the Bill on gas and on what happens if an energy company goes into administration. However Advice NI would wish to make general comment about the impact of rising energy costs on the most vulnerable households across Northern Ireland. Very often the most vulnerable are also acknowledged as being the 'hardest to help' and so can often 'suffer in silence' particularly with regard to adequately heating their home.

In the current economic crisis many lower income families in Northern Ireland are struggling to pay bills and make ends meet. There has been an unprecedented increase in energy prices with related increases in essential household grocery items. This coupled with the fact that the uprating of benefits, tax credits and the national minimum wage is minimal in comparison means that people are set to find themselves in even greater hardship. On top of this unemployment has seen record increases, inevitably meaning even more people falling into debt. The situation shows no signs of improvement and Advice NI notes with concern that the seasonally adjusted claimant count in May 2010 increased by 100 over the month to 55,500 and in addition the

Department of Enterprise, Trade and Investment was notified of 81 proposed redundancies in the latest reference period and 98 confirmed redundancies in May 2010.

Advice NI would draw attention to a number of issues worthy of consideration moving forward:

1. Warm Homes Scheme

The Warm Homes scheme was relaunched on 1 July 2009. Warm Homes offers a range of insulation measures to households on a qualifying benefit, and also a Benefit Entitlement Check and Energy Advice. Warm Homes Plus offers insulation and heating measures to households in receipt of a qualifying benefit and who are identified through the assessment process to have Economy 7, Solid Fuel, Bottled Gas / LPG or no heating system at all.

Advice NI notes that a review of the scheme is planned to take place commencing in September 2010. Advice NI believes that there should be a particular focus on the resources available to the scheme; uptake of the measures, uptake of the Benefit Entitlement Check service and outcomes achieved by the Benefit Entitlement Check service. Advice NI has been heavily involved in benefit uptake work and advisers have been able to generate significant additional income for clients. The impact of uptake work in terms of additional income generated for low income households is impossible to overstate. The following case study illustrates the impact of effective benefit uptake activity:

"The organisation received a referral from a social worker regarding a rurally isolated mother and son who suffered from a range of severe physical and mental disabilities. A home visit was arranged with the social worker where it was discovered that there was no heating in place, few social security benefits and numerous debts. The adviser completed Benefits Entitlement Checks and secured entitlements to a range of disability benefits and Pension Credit. The adviser also assisted with applications for a Disabled Facilities Grant and for a heating system to be installed. The adviser has entered into long term negotiations with creditors and has been able to get some debts written off with the help of evidence from social services and health professionals. A 'Good Morning Magherafelt' telephone call is now in place each morning as well as a range of other support provision with the result that these clients now enjoy a better quality of life." Advice NI member - Magherafelt District Advice Services

The Warm Homes Benefit Entitlement Check service should be able to demonstrate similar positive outcomes and if it is not as effective as it could be, there should be action taken to make improvements to the service. In particular we would encourage consideration of advice sector involvement in order to make the service as effective as possible.

2. Helping Customers Avoid/Manage their Energy Debt

Advice NI has been part of a research team which has been involved in a project with the Northern Ireland Authority for Utility Regulation (the Regulator) on the subject of energy customer debt in Northern Ireland. The research was published on the 9th June 2010 and is available to view at (http://www.uregni.gov.uk/news/view/helping_customers_avoid_manage_debt).

The overall aim of the research was to:

- "Review existing debt and disconnection policies and sample their application in relation to individual customers [i.e. domestic customers] who are in debt"; and, based on this,
- "Make recommendations for a best practice model for energy suppliers in dealing with debt and disconnection".

Advice NI would draw attention to the overarching themes which emerged from the research which included the need for greater consistency across suppliers regarding their approaches to customers in debt; increased and early engagement with customers in arrears; sustained communication with customers; explicit recognition of current financial context – greater levels of poverty prevail; recognition of constraints on sharing client information (e.g. legitimate use of Data Protection legislation).

In terms of issues for energy suppliers, these included: ongoing training of staff; joined up working (internal and external); need for improved assessment of customer needs / customer insight; need for proactivity (rather than reactivity) regarding identifying vulnerable clients (including financially vulnerable); need for services that are closely aligned to the specific needs of customers; need for more sophisticated data collection and data analysis / mining; need to refer customers for energy efficiency advice and grant opportunities.

Finally in terms of advice provision, the research identified a number of issues including the need to increase awareness of what is available to customers; the fact the advice services are independent; that advice services adhere to a Code of Practice (e.g. Common financial statement: Standard method of assessing ability to pay); issue of the need for standard level of training for debt adviser staff; and the need to increase in resources to this sector if further demand is placed on them.

In terms of the Energy Bill under deliberation, the research does focus on pre-payment meters and does mention the issue of meter tampering. The research indicates that customers who interfere with their meters can accumulate debt as a result of obtaining energy for which they have not paid. Advice NI would caution that the outworking of the 'Power of Entry' aspect of the proposed legislation may bring to light energy debts. As such where a household is deemed to be vulnerable, Advice NI believes that energy suppliers should have appropriate policies in terms of maintaining supply and recouping monies owed.

Advice NI would welcome further engagement on the issues raised by this research.

3. Energy company schemes to assist people cope with their energy costs

Advice NI has been part of a very successful 'For Your Benefit' benefit uptake campaign funded by NIE. The Advice NI 'For Your Benefit' service provides free, confidential and independent benefit entitlement checks to encourage benefit take-up for lower income customers across Northern Ireland. Previous benefit entitlement activity undertaken by NIE and advice partners highlighted that on average, customers were £30 per week better off, making a significant contribution to household bills.

Advice NI notes that the current 'For Your Benefit' project is due to end in the autumn of 2010. Advice NI would call for this activity to be extended and expanded particularly in light of the bleak future facing many household across Northern Ireland.

Advice NI would also call for other energy providers to follow the example set by NIE and fund their own benefit uptake initiatives.

We trust that this submission is helpful and we are happy to provide further information as may be required.

Contact information on this Social Policy Briefing Paper:
Bob Stronge (Chief Executive)

Fiona Magee (Deputy Chief Executive)
Kevin Higgins (Head of Policy)

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Response from OFMDFM Cttee re Energy Bill

Committee for the Office of First Minister and deputy First Minister
Room 404
Parliament Buildings

Tel: +44 (0)28 9052 1448
Fax: +44 (0)28 9052 1083

From: Cathie White
Clerk to the Committee for the Office of the First Minister and deputy First Minister

Date: 2 July 2010

To: Jim McManus
Clerk to the Committee for Enterprise, Trade and Investment

Subject: Energy Bill

At its meeting of 30 June 2010, the Committee for the Office of the First Minister and deputy First Minister considered your request for its views on the Energy Bill.

The Committee agreed that I should forward to you the following comments:

- There is no mention of All-Ireland co-operation on Renewables in the Bill.
- There is a supplier of renewable energy in the Republic of Ireland; however there is a cost implication to bring the energy over the border. This anomaly needs to be addressed.
- Local Government are experiencing difficulties in connecting to the grid, specifically with gas programmes at landfill sites and connection costs are astronomical. There needs to be better co-operation to make connection easier.

Yours sincerely

Cathie White

Committee Clerk

Response from SD Cttee re Energy Bill

Committee for Social Development
Room 412,
Parliament Buildings,
Stormont,
Belfast BT4 3XX

Tel: 028 9052 1864 Mob:078 2514 1294 peter.mccallion@niassembly.gov.uk

To: Jim McManus
Clerk to the Committee for Enterprise, Trade and Investment

From: Peter McCallion

Date: 28 June 2010

Subject: Energy Bill

At its meeting of 24 June 2010, the Committee for Social Development considered your letter inviting written submissions for the Committee Stage of the Energy Bill.

The Committee agreed that it will not be submitting evidence to the Committee Stage of the Energy Bill.

Peter McCallion

Committee Clerk

Consumer Council

23rd September 2010

In principle the Consumer Council supports all the proposals in the Bill as they either formalise existing arrangements or strengthen consumer protection.

However, we have some concerns that we have already raised at the formal consultation and Committee written evidence stages. The majority of our comments concern the rights of access and criminal offence that deal with meter tampering and the Guaranteed Standards of Service.

Rights of access

Proposed:

Currently gas suppliers can only access a meter when there are health and safety issues. Under the Bill they can access when there is suspicion of meter tampering.

Safeguards against misuse:

- Only at reasonable time with permission of occupier;
- If no permission or property unoccupied then a warrant from Justice of peace must be obtained;
- Premises secured and damage repaired by supply company

We say:

The Consumer Council condemns meter tampering as it endangers the individual and the community and ultimately has to be paid for by other consumers. It is estimated to cost £1m per year.

From complaints we have received and discussions with CAB we believe it is on the increase. Since August 2009, we have been contacted 33 times regarding gas meter tampering and six times regarding electricity meter tampering. The highest month was January 2010 when had nine contacts regarding gas meter tampering.

Concerns

Entry to the property against the occupier's permission should be a last resort.

Guidance is needed for suppliers and the Justices of the Peace, as to what is sufficient evidence to provide reasonable cause to suspect meter tampering.

Customers should not be left without a supply of gas until such times as it has been proven that meter tampering has occurred.

Preventing Debt and fuel poverty

Meter tampering is to some extent a symptom of the crises levels of fuel poverty in Northern Ireland. It shows the desperate choice that some people are forced to make when faced with the choice of heating or eating.

Whilst creating powers to clamp down on meter tampering, suppliers must be required to take measures and have policies that minimise debt amongst its customers.

The Consumer Council is working with the Regulator on a project to introduce cross utility debt prevention measures. It may be necessary to legislate to enforce some measures coming out of this.

Ofgem have identified areas of good practice in their 2008 Report – 'Debt and disconnection Best Practice Review'. These are:

- Getting billing right
- Early, proactive and varied contact with customers to prevent debt build up
- Using all customer contacts to identify vulnerability
- Provide holistic advice and wide range of solutions
- Setting appropriate repayment rates
- Disconnection as a last resort

Fuel Poverty

- 50% of Homes in NI are in fuel poverty according to NIAUR and DETI
- NI has the second lowest regional average earnings in the UK[1];
- Between 2002 and 2009, excess winter deaths in NI increased by 366 per cent[2] and are now at the highest level in Western Europe.
- The Consumer Council call for DSD to:
- Take ownership of fuel poverty and take responsibility for leading and delivering a strategy that co-ordinates all stakeholders and Government departments;
- Reinstate its commitment to eradicating fuel poverty by 2016;
- Bring forward legislation to enable customer data to be used to identify the areas most in need of help;
- Implement the Kirklees scheme; an area based approach which has already been piloted in Northern Ireland;
- Introduce a Boiler Replacement Scheme;
- Ensure the Utility Regulator increases the safeguards for customers in debt with their energy supplier and that regulated gas and electricity prices are as low as possible;[3]
- Work with energy suppliers and generators to create mandated social support schemes/tariffs for all disadvantaged energy consumers;[4]
- Examine whether regulation of the home heating oil industry can provide fuel poor households with the support and safeguards that natural gas and electricity consumers have; and
- Introduce an energy brokering scheme.[5]

Offence of damaging a gas plant

Proposed

Creating a criminal offence for meter tampering

We say

We support this as it acts as a deterrent against meter tampering and places gas in line with electricity.

Concerns

The definition of the offence says 'by culpable negligence, damages or allows to be damaged' as well as 'intentionally, damages or allows to be damaged'. The first is broad and we question whether this could criminalise people who are not necessarily involved in meter tampering.

Guaranteed Standards of Performance for gas

Proposed

Standards of customer performance that provide for compensation if not achieved.

We say

- This is long overdue.
- The principle of GSS is not to ensure the consumer receives compensation for poor service but rather to incentivise the company to deliver high standards.
- Consumer Council looks forward to working with the Regulator and suppliers on the detail of these,

Concerns:

Compensation payments must come from the profits of the gas company. There would be no incentive for the company to deliver high standards if it was allowed to pass on the cost of GSS to customers.

Given the role of the Regulator in GSS, this highlights the potential conflict between its dual function of both 'protecting the consumer and promoting the gas industry'. It is time this function was reviewed.

Deemed contracts

Proposed

Formalise deemed contracts

We say

Formalising deemed contracts, protects consumers.

Concerns

Customers on deemed contracts should 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,

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;

We understand the Regulator will use its licence powers to impose conditions on the deemed contracts. The Consumer Council must be involved in the development of these conditions to protect the consumer.

Special Administration Regime for gas and electricity

Proposed

Creating a regime for gas and electricity, transmission and distribution companies facing insolvency.

We say

We welcome this as it increases consumer protection. This places the interests of the consumer ahead of other parties if a network operator becomes insolvent and ensures a continuation of supply.

Concerns

We would like more detail and assurance from the Regulator that enforcement of licence conditions would protect consumers in the eventuality of a network operator ceasing trading outside of insolvency.

Gas meter stamping and testing

Proposed

The Regulator will be allowed to delegate meter stamping and testing.

We say:

This is acceptable.

Concern

The responsibility of meter testing should be outside the gas industry and delegated to an appropriate independent body, especially in cases of a meter dispute

Gas Storage

Proposes:

Clarifying issues required to allow large scale gas storage

We say

This amendment is necessary to the Gas (Northern Ireland) Order 1996.

For further information contact:

John French, Head of Energy at the Consumer Council on
028 9067 4804 or jfrench@consumercouncil.org.uk

Consumer Council covering letter

[1] Source: Annual Survey of Hours and Earnings, Office for National Statistics (2009).

[2] Source: Excess Winter Deaths Summary 1974-75 to 2008-2009 NISRA (March 2010), 2001-02 = 224, 2008-09 = 1044.

[3] Debt management project documents on NIAUR website http://www.uregni.gov.uk/publications/view/helping_customers_avoid_manage_debt

[4] Refer to NIAUR consultation on Social Tariffs and CCNI response at: www.uregni.gov.uk/news/view/publication_of_responses_to_assisting_vulnerable_customers_with_energy_affo/

[5] Refer to EBS feasibility Report : www.consumerCouncil.org.uk/publications/?id=522

Briefing from Consumer Council re powers of entry



The Consumer Council

The Consumer Council paper on the use of Powers of Access in the Northern Ireland Electricity industry

Prepared for the Enterprise Trade and Investment Committee, October 2010

Introduction

The Consumer Councils powers to investigate complaints are set out in the General Consumer Council (Northern Ireland) Order 1984, the Energy (Northern Ireland) Order 2003 and the Water and Sewerage (NI) Order 2006. The Enterprise Trade and Investment Committee has asked the Consumer Council to comment on how the powers of access that apply in the Northern Ireland electricity industry work in practice.

The law

The powers of entry for electricity are contained in the Electricity Order 1992, Schedule 6, paragraphs 5 to 11. The legislation allows any person authorised by the electrical supplier entry to any property at a reasonable time to inspect the meter after showing identification.

The main safeguard against misuse of this power is that entry can only be gained with the occupiers consent or by obtaining a warrant from a Justice of the Peace. Schedule 6, 9(1)(a) provides that a warrant will be granted where a Justice of the peace is satisfied by complaint on oath that admission to premises is reasonably required for the purpose specified in the complaint, The Energy Bill will bring the same process into the gas industry in Northern Ireland.

Northern Ireland Energy Revenue Protection Team

Northern Ireland Energy (NIE) is the organisation that owns and operates the electricity network and also owns and reads all the electricity meters in Northern Ireland. NIE has a dedicated

Revenue Protection Unit (RPU) that deals with matters where the powers of entry may be used. The RPU have a written policy and procedure on obtaining a warrant and a De-Energisation, (disconnection) Code of Practice. Both of these have been shared with the Consumer Council.

The RPU either obtain the warrant themselves or are passed a warrant by the electricity supplier. Even when a warrant is obtained access is normally provided by the occupier. Only 20 per cent of the warrants the RPU receive are actually used to gain access to the property.

Debt and disconnection

NIE Energy (NIEE) is the organisation that until recently supplied electricity to all domestic customers in Northern Ireland. In June 2010, Airtricity entered the domestic electricity market. There are currently five electricity suppliers for commercial customers.

NIEE has a policy of non-disconnection for domestic customers. It is able to do this because it can require customers who are in debt to take a keypad meter (KPM). KPM's are a Pay as You Go meter and can be calibrated so that credits bought will pay for both electricity in advance and an amount towards the outstanding arrears.

NIE has informed us that in the last month the RPU received warrants to enter 120 properties to install a KPM. The warrants will have been obtained by the supplier (in practice this will currently be NIEE). However, it is only in a small number of cases that it is necessary to execute the warrant as entry is normally given voluntarily at this stage. If it is necessary to execute a warrant, the Police will be asked to attend to ensure there is no breach of the peace.

All suppliers will disconnect commercial properties for non-payment. NIE have advised us that in the last month they received 80 warrants to gain entry to commercial premises to disconnect the supply. The warrants would be obtained by the relevant supplier.

Fraud and interference

In the case of suspected fraud or interference the RPU monitor and investigate and take legal action. NIE has advised us that over the last five months the RPU has obtained an average of 12 warrants to enter a property where they suspect fraud or interference. In addition to this the RPU are passed 10 warrants each month from NIEE where a KPM is showing that no electricity has been purchased.

In order to obtain a warrant either the RPU or the relevant supplier must provide evidence that satisfies the Justice of the Peace that it is reasonable for them to require entry. NIE suggest that typically the Justice of the Peace will require:

- Bills that have been sent and in the case of fraud these may indicate from the consumption pattern that there has been interference;
- Evidence of three visits to the property;
- Copies of letters requesting entry to the property;
- Reports of suspicious activity from internal and external sources.

Additionally the Revenue Protection Manager is required to swear an Affidavit as to the reason required for the request for a warrant and to the authenticity of the evidence.

The RPU advised that in September they investigated 87 cases of unbilled usage. The source of these is:

- NIE monitoring systems;
- Electricity supplier;
- Police;
- External (anonymous).

The NIE monitoring systems includes consumption patterns in data files and field information from engineers and meter readers.

NIE will pass on their legal and administrative costs to the supply company involved. It is a decision for the supply company if and how they recover these costs from the customer. The cost to de-energise a property where a warrant is required is £103.

NIE has advised us that the main problem that they encounter is when there is a mix up with the address of the property. However, no figures are available from NIEE as to how often this has occurred.

Consumer Council complaints

The Consumer Council has statutory duties to handle complaints about buses, trains, planes, ferries, natural gas, electricity, coal and water.

The highest number of electricity complaints received is about billing. We do receive a significant number of complaints about debt and disconnection but these usually relate to a dispute over the size of the debt and payments made.

Issue	2006-2007	2007-2008	2008-2009	Total
Supply (billing)	984	701	819	2504
Supply (other)	191	75	28	294
Initial connection to supply	164	44	20	228
Metering	88	32	55	175
Price increase 1	n/a	n/a	86	86
Safety of supply	20	35	9	64
Supply (debt & disconnection)	25	23	13	61
Marketing & sales	15	12	20	47
Miscellaneous	26	42	19	87
Total	1513	964	1069	3546

From 1 September 2009 to 30th September 2010 the Consumer Council has received 956 contacts from consumers on issues about electricity. Although we do not keep a specific category for "powers of access", our analysis has shown that in the same period three complaints have been recorded regarding the use of the powers of entry in electricity. These complaints were about:[\[1\]](#)

- Damage to property by NIE when forcing entry;
- Entry made to the wrong premises; and

- A failure by NIE staff to give sufficient time for a customer to clear their account immediately prior to disconnection taking place.

Conclusion

The limited number of complaints relating to the powers of entry in the Northern Ireland electricity market suggests that there is not a problem with the misuse of these powers.

For further information contact:

John French, Head of Energy at the Consumer Council on
028 9067 4804 or jfrench@consumercouncil.org.uk

[1] The Consumer Council introduced this category during 2008 to reflect subsequent tariff increases by NIE.

Mr Jim McManus
Clerk to the Committee for
Enterprise, Trade and Investment,
Northern Ireland Assembly,
By email to: committee.eti@assembly.gov.uk.



The Consumer Council

23 July 2010

Elizabeth House,
118 Holywood Road,
Belfast BT4 1NY
Tel 028 9067 4895
Fax 028 9065 7701
Email: rwilliams@consumercouncil.org.uk

Dear Jim,

Re: Energy Bill

Thank you for inviting the Consumer Council to submit written evidence for the Committee Stage of the Energy Bill.

The Consumer Council responded to a consultation on the bill when it was at an early stage in August 2009. I have attached our original consultation response for your information.

You will note that the Consumer Council was supportive of all the proposals in the consultation. We were also satisfied with the DETI response to the issues that we raised in our consultation response, (copy attached). We are not aware of any significant changes to the final Bill from the consultation document and our original consultation response remains our current position.

If you require any clarification please do not hesitate to contact me.

Yours sincerely,

RICHARD WILLIAMS
Senior Consumer Affairs Officer

Consumer Council submission



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Chairperson
Rick Hill
Deputy Chairperson
Siubhan Grant
Chief Executive
Antoinette McKeown

The Consumer Council

Elizabeth House
116 Hollywood Road
Belfast
BT4 1HJ 14 May 2010

Mr Jim McManus
Clerk
Committee for Enterprise, Trade and Investment
Room 414
Parliament Buildings
Stomont
BT4 3XX

Dear Jim,

With apologies for the delay, thank-you for your letter of 30th March. We would welcome the opportunity to speak to the Committee in response to our views on the draft Energy Bill

Your letter raises two points; firstly the proposed regime for 'powers of access'. It is the position of the Consumer Council that gas licence holders should have the same access rights as electricity licence holders; to enter premises if they suspect meter or fittings have been tampered with. The Consumer Council is strongly against the practice of meter tampering as it is dangerous, not only for the household but for the community as a whole. It is estimated that meter tampering costs the consumer £1m per year and we support any reasonable measures to stop this practice. However, in carrying out this act, natural gas licence holders must act in a reasonable and fair manner; and consumers should not be left without a supply of gas until such times as it has been proven that meter tampering has occurred.

On your second point, The Consumer Council has long called for the inclusion of guaranteed standards of performance (GSS) for natural gas suppliers, so that gas customers are provided with the same levels of standards as electricity consumers. It is our belief that, GSS acts as a driver for energy companies to improve standards and enhance the service they deliver to consumers; and if these standards are not met compensation should be paid to consumers. It is our view that any compensation payments paid for the failure to deliver adequate standards and service should come from the profits of the energy consumers, and not recovered from a company's customer base.

If you need any further information on this or other energy issues, please do not hesitate to contact me.

Regards,

A handwritten signature in black ink, appearing to read "John French". The signature is written in a cursive style with a long, sweeping underline that extends to the left.

John French
Head of Energy

Consumer Council response to DETI Gas Bill



The Consumer Council

**Response to the DETI's
Consultation on**

“Gas Bill – Policy Consultation”

Ref: PD 2009 0300

August 2009

1. Introduction

- 1.1 The Consumer Council welcomes the opportunity to respond to the Department for Enterprise, Trade and Investment's Gas Bill consultation. We welcome this review of the Gas (Northern Ireland) Order 1996 as it provides an opportunity to provide additional protection for natural gas consumers.
- 1.2 The Consumer Council's role is to give consumers a voice - and to make sure that voice is heard by those who make decisions that affect consumers. A Non-Departmental Public Body, the Consumer Council was set up by statute in 1985 to promote and safeguard the interests of all consumers in Northern Ireland.
- 1.3 The Consumer Council has certain specific responsibilities for energy, passenger transport, food, and water.
- 1.4 A key feature of the Consumer Council's work is the need to carry out research to determine consumer concerns and to campaign for the best possible standards of service and protection. The Consumer Council has a major role to play in educating consumers so that they will have the skills and confidence to meet future challenges.

2.0 Executive Summary

- 2.1 The Consumer Council is supportive of all the proposals outlined under this consultation document.
- 2.2 We acknowledge that these proposals are either formalising existing arrangements, particularly regarding meter stamping and gas safety, or providing additional protection for Northern Ireland consumers, in respect to special administration and guaranteed service standards.
- 2.3 We support the proposal of rights of access, however urge companies to act responsibly when exercising this additional power and to ensure,

as far as is possible, that meter tampering has occurred before gaining access.

2.4 We seek assurances that consumers will be no worse off following the implementation of any of these proposals, in particular the proposal to introduce deemed contracts. Our view is that those consumers on deemed contracts should not be charged any more than the supplier's published tariff.

2.5 As the legislative timescale for the amendment to the Gas (Northern Ireland) Order 1996 means it is unlikely to be operation until June 2011, we urge suppliers to voluntarily implement measures which will provide more protection for consumers as soon as possible. Particularly, we believe guaranteed standards of service could be implemented by gas companies sooner than the legislative timescale.

3.0 Extension of the powers of access

3.1 The Consumer Council recognises that the Gas (Northern Ireland) Order 1996 does not allow gas licence holders access to their meter unless they have reasonable cause to suspect there may be a danger to life or property. We realise that this is not in line with existing legislation in respect to electricity meters. Therefore we are supportive of DETI's proposal to allow licence holders the right to enter premises if they suspect gas meters or fittings are being tampered with.

3.2 The Consumer Council is strongly against the practice of meter tampering. Our main concern is safety and ultimately meter tampering is dangerous, not only for the household but for the community as a whole. Secondary, we also realise that all consumers pay for any loss of revenue associated with the practice of meter tampering. It is estimated that this practice costs the consumer £1m per year and we support any reasonable measures to stop this practice.

- 3.3 That said, we urge licence holders to act in a reasonable and fair manner. DETI's proposal will allow licence holders access to meters on the **suspicion** of meter tampering. As safety is our main priority we support this practice, however customers should not be left without a supply of gas until such times as it has been **proven** that meter tampering has occurred. We would expect all licence holders to take a responsible and considered approach and have due regard for the sensitivities during the period of investigation. Further, licence holders must not abuse their position and must demonstrate reasonable assurance of meter tampering before gaining access to meters.
- 3.4 We support DETI's proposal to make certain gas equipment exempt from judgement and bankruptcy processes.

4.0 Guaranteed Gas Standards of Performance

- 4.1 The Consumer Council has long called for the inclusion of guaranteed standards of performance (GSS) for gas, to afford consumers the similar levels of standards as electricity consumers. We consider this proposal long overdue.
- 4.2 We urge all gas companies to implement GSS on a voluntary basis to address the inequality between electricity and gas consumers more quickly than the legislative timescale.
- 4.3 We look forward to working with the Northern Ireland Authority for Utility Regulation (NIAUR) in relation to developing the standards of performance. Indeed, we have already considered areas which we believe should be covered by GSS and have previously shared these with both NIAUR and DETI.
- 4.4 GSS act as a driver for gas companies to improve standards and enhance the service delivered to consumers. Therefore they should be sufficiently challenging. Our main interest is in improving the service

consumers receive, however where the gas company does not meet the standard we believe the company should pay compensation to the customer. The overarching principle of GSS is not to ensure the consumer receives compensation for poor service but rather to incentivise the company to deliver high standards.

- 4.5 We strongly advocate that the compensation payments awarded to consumers for failed delivery must come from the profits of the gas company. We believe it perverse that any money paid to consumers as a result of a failed service delivery should be recovered from all consumers. This 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.
- 4.6 In our view, a financial penalty is the main incentive for any company to improve service delivery and do not believe any other measure will achieve this.

5.0 Special Administration Regime for Electricity and Gas

- 5.1 The Consumer Council supports DETI's proposal to implement a special administration regime in the event of a network company becoming insolvent, to ensure continuity of supply is maintained for both electricity and gas consumers.
- 5.2 The Consumer Council queries whether the Gas (NI) Order 1996 is the most suitable legislation for this condition, given the proposal covers both gas and electricity. We note that a similar condition exists within the Water and Sewerage Services (Northern Ireland) Order 2006 and suggest that an amendment to the Energy (Northern Ireland) Order 2003 would be more appropriate.

6.0 Gas Meter (Testing and Stamping)

- 6.1 The Consumer Council has no objection to DETI's proposal to amend the legislation to give NIAUR delegation powers in respect to testing and stamping gas meters.
- 6.2 However, we do not believe that the responsibility of meter testing should reside within the gas industry, especially in cases of a meter dispute. We would recommend the delegation by NIAUR to an appropriate independent body for verification and testing, and for NIAUR to choose the most cost effective option when considering this appointment.

7.0 Deemed Contracts

- 7.1 The Consumer Council recognises that the proposal to implement deemed contracts to the Gas (Northern Ireland) Order 1996 will bring it in line with corresponding legislation in electricity.
- 7.2 We accept that deemed contracts will provide both the gas consumer and the gas industry additional protection in the scenario where a contract has not been explicitly between the customer and supplier agreed but gas has been used.
- 7.3 Whilst we recognise that the purpose of this consultation is to implement the legislation for deemed contracts and that the NIAUR will create the appropriate licence conditions, nevertheless we wish the following to be taken into consideration:
- 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;
- Deemed contracts should be developed in consultation with the Consumer Council.

8.0 Gas Safety Management

- 8.1 The Consumer Council supports the existence of a single telephone contact for gas emergencies.
- 8.2 We agree the responsibility to provide a single telephone contact for gas emergencies should be shared by all gas licence holders. We accept that this should not solely be the responsibility of Phoenix Natural Gas. We would like to acknowledge that the proposal to reflect this in the legislation is only formalising current industry practice where responsibility is shared.

9.0 Gas Storage

- 9.1 The Consumer Council is aware that legislation is already in place requiring companies to apply for a licence to build or operate natural gas storage facilities.
- 9.2 As the proposal outlined in this consultation is to clarify the conditions in relation to third party access to off shore gas, a requirement under EU Directive 2003/55/EC, we accept that this amendment is necessary to the Gas (Northern Ireland) Order 1996.

9.3 We will provide a response to NIAUR's consultation on the Gas Storage Framework, which sets out options how third party access will be treated. We recognise that this framework is needed to assist companies interested in developing gas storage in Northern Ireland.

NIAUR submission

RECEIVED
08 JUL 2010
ETI COMMITTEE



From the office of the Chief Executive

Mr Alban Maginness MLA
Chairperson of the Committee for Enterprise Trade and Investment
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
BELFAST BT34 3XX

6 July 2010

Dear Alban

Energy Bill

Thank you for inviting the views of the Utility Regulator on the proposed Energy Bill. The Utility Regulator welcomes the proposed Bill which will ensure the gas sector benefits from the same policies that already have been implemented in the electricity sector.

The proposed Energy Bill will ensure greater protection for gas consumers. The Authority for Utility Regulation would be provided with the power to direct and publish Guaranteed Standards of performance for gas conveyance and supply. This would ensure that gas consumers are aware of the level of service they should be provided and gas licence holders are committed to providing a guaranteed level of performance. In addition, the conditions relating to deemed contracts will provide gas customers with the same level of rights as that already experienced by electricity consumers.

The proposed special administration conditions will ultimately help to ensure the continuity of gas and electricity supply by putting energy consumer's interests above those of creditors and shareholders if a gas conveyance licence holder or an electricity transmission licence holder becomes insolvent.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Iain Osborne'.

Iain Osborne
Chief Executive

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Letter from NIAUR re extra info

Mr Jim McManus
Clerk, Committee for Enterprise, Trade and Investment
Room 414
Parliament Buildings
Stormont
BT4 3XX

20 April 2010

Dear Jim

Your letter of 30 March 2010 refers.

You raise two issues, the first of which refers to the 'deemed contract' regime. I am advised that the proposed changes on deemed contracts are designed to bring the gas legislation in line with the legislation that already exists for electricity. The deemed contract arrangement is designed to ensure continuity of supply for customers where a signed contract with a supplier does not exist with the customer. It is therefore more an issue of whether a physical signed contract exists, rather than whether customers on deemed contracts pay more. The exact nature of the contract, whether it is a signed physical contract or a deemed contract, will have no bearing on what the customer will pay.

On your second issue, guaranteed standards of performance already exist for electricity and the proposed legislative changes bring gas in line with this. We are currently considering the question of recovery of money paid to consumers as a result of failed service. While no decision on a means of addressing this issue has yet been made, it would be our intention to subject any proposal to public consultation.

I hope that this clarifies our position on the matters you raise.

Yours sincerely

Greg Irwin
Board Secretary and Communications Manager

Northern Ireland Authority for Utility Regulation
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NIE Response



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Our Ref: WGD/jes.

Mr Jim McManus
Committee Clerk
Room 424
Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3XX.

28 July 2010.

Dear Jim

I refer to the Committee's public consultation on the above matter.

Part 2 only of the Energy Bill – "Special Administration Regime for Protected Energy Companies" is applicable to NIE. We have the following comments to make on these provisions.

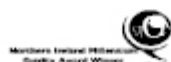
In our earlier correspondence with DETI we expressed our concern that the Department's proposals should mirror the corresponding arrangements in Great Britain. This is essential for NIE in its dealings with third parties who would otherwise be concerned that the arrangements in Northern Ireland introduce additional risk for them in their dealings with NIE. We are pleased to note that the regime proposed by the Bill is the same as that introduced in Great Britain under the Energy Act 2004.

We have one minor drafting point to make. We consider that the reference to "leave" in clause 24(4) should be changed to "permission". The application referred to is for "permission" and this would also accord with the wording used in Section 162(4) of the Energy Act 2004.

Yours sincerely

Gordon Dunlop
Regulation Officer.

L 100726 – Energy Bill



Northern Ireland Electricity plc Registered Office: 120 Malone Road, Belfast BT9 5HT Registered in Northern Ireland. A member of Vitol Group.

Phoenix Energy

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Jim McManus
Clerk to the Committee for Enterprise, Trade and Investment
Northern Ireland Assembly
Room 414, Parliament Buildings
Ballymiscaw, Stormont

Belfast
BT4 3XX

27th July 2010

Dear Jim

Proposed Energy Bill

Thank you for providing the Phoenix Energy Holdings Group with this opportunity to provide our views on the proposed Energy Bill.

Phoenix was established in 1996 to bring natural gas to Northern Ireland, where there was previously no natural gas distribution network. Since 1996 local, national and international partnerships have delivered an investment of over £510 million into the Northern Ireland economy and the wider natural gas industry now provides employment to over 3,000 people. Phoenix continues to invest in infrastructure that currently has over 130,000 domestic and business customers connected, and continues to grow at around 8,000 new customers each year.

The Phoenix Group has grown as the natural gas network has expanded and there are now four trading companies within the wider Group:

Phoenix Natural Gas Ltd is the largest gas distribution business in Northern Ireland, being the owner and operator of the licence for the distribution network in the Greater Belfast Area and Larne. The distribution business is responsible for the development of the pipeline network and also for providing a 24/7 operational and transportation service platform to gas suppliers under the rules of the company's network code.

Phoenix Supply Ltd is the market leader in gas supply in Northern Ireland, providing natural gas to customers from the Phoenix Natural Gas distribution network. The Supply division competes directly with other gas suppliers in its licence area, which mirrors the Group's distribution business licence area in Greater Belfast and Larne. Currently Phoenix supplies around 130,000 domestic and business customers and provides bespoke natural gas purchasing solutions for industrial and commercial customers. In addition, Phoenix Supply trades around 110 million therms of natural gas on the wholesale market and provides billing services for its expanding customer base from its offices in Belfast. The business is regulated under licence by the Northern Ireland Authority for Utility Regulation.

During 2008, Phoenix Energy Ltd was incorporated in order to supply natural gas to customers within the Republic of Ireland, expanding the service offering of Phoenix Supply Ltd across the island of Ireland. Phoenix Energy was awarded a licence to supply natural gas in December 2008 and signed up its first customers during 2009. The company has been hugely successful and has penetrated sections of the Republic of Ireland gas market which have not benefited from competition to date. The business is regulated under licence by the Commission for Energy Regulation in Dublin.

Phoenix Energy Services Ltd is a specialist provider of downstream services into the Northern Ireland energy market, Energy Services' remit includes the provision of a 24/7 emergency response to the Group's distribution business, together with metering and meter reading services across the natural gas industry in Greater Belfast and Larne.

I hope that you will find our contribution to the call for evidence both informative and useful.

Phoenix Natural Gas and Phoenix Supply are both more than willing to meet with the Committee and please do not hesitate to contact me should you wish to arrange a further briefing to discuss any aspects of the proposed Bill.

Yours sincerely,

Abigail McCarter
Regulatory Manager

Proposed Energy Bill

To: The Northern Ireland Assembly Committee for Enterprise, Trade and Investment

From: Phoenix

Date: 27 July 2010

Subject: Written evidence submitted by Phoenix to the to the Committee in relation to the proposed Energy Bill for Northern Ireland

Summary

1. Phoenix has already provided evidence to the Department in support of the introduction of many aspects of the proposed Energy Bill ("Bill").
2. Some of the evidence which Phoenix has provided to date is considered confidential and is not contained within this report.
3. Phoenix Natural Gas Ltd ("PNG") and Phoenix Supply Ltd ("PSL") are therefore both more than willing to meet with the Committee to discuss any aspects of the proposed Bill further.

Standards of Performance (sections 1 to 9)

4. PNG and PSL are committed to delivering a high quality of customer service.
5. The current basis upon which each business's performance is measured is its service standards. Separate targets are in place for PNG and PSL. The targets themselves are fully endorsed by the Northern Ireland Authority for Utility Regulation ("Utility Regulator") and the Consumer Council for Northern Ireland ("Consumer Council"), the consumer body charged with representing the interests of gas consumers, in accordance with conditions set out in PNG's and PSL's respective licences.
6. PNG and PSL publish these standards of performance each year and given the small number of complaints received by the Utility Regulator or the Consumer Council, are confident that the current conditions set out in licences of regulated gas utilities ensure that gas companies remain focussed on delivering all aspects of customer service.
7. PNG and PSL do not therefore believe that implementing guaranteed standards of performance will improve the level of customer service offered to their customers.
8. However if the legislation in the proposed Bill is introduced, there are a number of areas that should be considered by the Utility Regulator before determining the guaranteed standards of

performance that will apply to licensed natural gas utilities e.g. phased introduction, cost implications, implementing guaranteed standards of service across all Northern Ireland energy utilities.

Exemption of Gas Plant from certain processes (section 11)

9. PNG is supportive of the proposed legislation.

Deemed contracts for supply in certain cases (sections 12 and 13)

10. PSL is supportive of the proposed legislation on the basis that licence modifications are by agreement with the holder of the licence.

Damage to Gas Plant (section 10) and Powers of entry (section 14)

11. PNG and PSL are fully supportive of the proposal to amend the natural gas powers of access legislation in Northern Ireland which ensures that these same provisions apply for the natural gas industry as the electricity industry.

12. Powers of access provisions are required to ensure that PSL and other suppliers are granted access to such properties to inspect PNG's meter and associated installation and to also allow PNG to inspect the asset it owns.

13. Damage to gas plant including meter tampering is a subset of these provisions. Meter tampering is a dangerous activity, posing danger to both life and property. Anyone who tampers with a meter is endangering the safety of consumers, members of the public and PNG's network. We therefore support section 10 of the proposed Bill which would find a person who intentionally or by culpable negligence damages any gas plant, guilty of an offence and liable on summary conviction to a fine.

Appointment of meter examiners (section 16)

14. PNG and PSL accept the provisions within the proposed Bill.

Special Administration Regime for Protected Energy Companies (sections 17 onwards)

15. There are many provisions contained within existing legislation and within licences of regulated utilities to safeguard the interests of consumers in the unlikely event that a gas or electricity network company was experiencing financial difficulties. These provisions make the Utility Regulator aware at the earliest opportunity to enable it to take mitigating action.

16. The provisions within the proposed Bill generally replicate the provisions of the Energy Act 2004 in Great Britain.

Introduction

17. Phoenix has already provided evidence to the Department in support of the introduction of many aspects of the proposed Energy Bill ("Bill"). We have not sought to reproduce this here and instead provide a summary of our views on each aspect of the proposed Bill in turn below.

18. Some of the evidence which Phoenix has provided to date is considered confidential and therefore is not contained within this report.

19. Phoenix Natural Gas Ltd ("PNG") and Phoenix Supply Ltd ("PSL") are therefore both more than willing to meet with the Committee to discuss any aspects of the proposed Bill further.

Standards of Performance (sections 1 to 9)

20. PNG and PSL are committed to delivering a high quality of customer service.

21. Natural gas is now available to over 274,000 properties across the PNG licensed area. The number of customers connecting to the network has been significant, growing to around 130,000 customers by the end of 2009, and continues to grow at around 8,000 new customers each year.

22. By the end of 2009 over 3,010km of new gas pipelines had been constructed across the Greater Belfast area.

23. PSL offers customers a range of payment methods. "Pay As You Go" meters continue to be the most popular option for domestic customers as they are an excellent budgeting tool that provides customers with added choice and more control over their gas consumption.

24. PSL's domestic customers also benefit from a range of services such as special provisions for older and disabled customers under the Phoenix Energy Care scheme, and the provision of energy efficiency advice to keep bills as low as possible.

25. The current basis upon which PNG's and PSL's business performance is measured is each company's service standards. Separate targets are in place for PNG and PSL. The targets themselves are fully endorsed by the Northern Ireland Authority for Utility Regulation ("Utility Regulator") and the Consumer Council for Northern Ireland ("Consumer Council"), the consumer body charged with representing the interests of gas consumers, in accordance with conditions set out in PNG's and PSL's respective licences.

26. PNG and PSL publish these standards of performance each year and given the small number of complaints received by the Utility Regulator or the Consumer Council, are confident that the current conditions set out in licences of regulated gas utilities ensure that gas companies remain focussed on delivering all aspects of customer service.

27. PNG and PSL do not therefore believe that implementing guaranteed standards of performance will improve the level of customer service offered to their customers.

28. However if the legislation in the proposed Bill is introduced, there are a number of areas that should be considered by the Utility Regulator as it undertakes its research before determining the guaranteed standards of performance that will apply to licensed natural gas utilities.

29. Firstly there will be cost implications if licensed gas utilities are required to guarantee their standards of performance. For example, companies will need to reassess their resources and infrastructure, both of which were not previously required to deliver guaranteed standards. Cost

differentials will need to be considered by the Utility Regulator as part of each utility's price control review.

30. Secondly, the oil industry is not subject to the same regulatory regime as natural gas, electricity and water utilities. Only 12% of homes in Northern Ireland are using natural gas^[1] compared to over 80% in England^[2]. This suggests that a high conversion rate is possible as Northern Ireland's natural gas networks develop. Assuming the majority of the remaining homes in Northern Ireland are using oil, guaranteeing standards for the natural gas industry and not the oil industry may suppress development of the natural gas industry in Northern Ireland and we therefore recommend that consideration is given to implementing guaranteed standards of service across all Northern Ireland energy companies.

31. Thirdly, guaranteed standards of service should, if introduced, be implemented on a phased approach. Any deviation from the current standards of performance published by gas utilities has the potential to damage customer confidence which is unwelcome at any stage and particularly as the natural gas industry in Northern Ireland is still developing. Provisions should therefore be made to allow utilities to adjust its business processes and infrastructure to meet new standards.

32. We therefore welcome section 4 of the proposed Bill which would require the Utility Regulator to complete a research and consultation exercise before determining standards of performance.

33. However under the Gas Act 1986 in Great Britain ("Gas Act") and the Electricity (Northern Ireland) Order 1992 ("Electricity Order"), before prescribing standards of performance in individual cases consultees must include gas/electricity suppliers and gas transporters/electricity distributors.

34. Furthermore, a notice of such proposals must be published.

35. Section 4 of the proposed Bill appears to only attach these obligations to when a determination of overall standards of performance is made. This may imply that a less rigorous procedure could be followed on prescription of individual standards than on overall standards of performance.

36. We believe that the procedures for determining standards in individual cases should mirror those for determining overall standards of performance in line with legislation for electricity in Northern Ireland and gas in Great Britain.

37. We note that the remaining standards of service provisions in the proposed Bill generally replicate the provisions within the Electricity Order or the Gas Act. However we recognise some differences that are worth considering:

(a) Under the Electricity Order, information on levels of performance by electricity distributors does not have to be collected unlike section 6 of the proposed Bill for gas conveyors.

(b) The Gas Act would not make it a criminal offence not to provide information to the Utility Regulator with respect to levels of performance unlike section 6 of the proposed Bill.

(c) The Gas Act would require the Utility Regulator to publish only statistical information relating to information collected unlike section 6 of the proposed Bill.

(d) The Gas Act does not put an obligation on suppliers/conveyors to provide information to customers about overall performance unlike section 7 of the proposed Bill.

(e) The Gas Act does not require suppliers to publish procedures for dealing with complaints unlike section 8 of the proposed Bill.

38. Finally section 9 of the proposed Bill details amendments to the Energy (Northern Ireland) Order 2003. The proposals update Article 41 to reflect the further requirements of gas licence holders; however, Article 41 does not reflect that the Bill prescribes standards of performance for gas suppliers. A later provision has been amended to this end and we only highlight this for clarification purposes.

Exemption of Gas Plant from certain processes (section 11)

39. PNG is supportive of the proposed legislation which will ensure that gas companies in Northern Ireland have similar protection against loss of equipment under the Judgements Enforcement (Northern Ireland) Order 1981 and under bankruptcy proceedings as is provided for Northern Ireland electricity companies and gas companies in Great Britain.

Deemed contracts for supply in certain cases (section 12)

40. The need for deemed contracts arises mainly from change of tenancies as suppliers may not always be aware that a customer has moved into a property until after the event.

41. Introduction of appropriate legislation will provide clarification for gas consumers and gas suppliers alike.

42. PSL welcomes the proposal to replicate the deemed contract provisions for the Northern Ireland electricity industry to the Northern Ireland natural gas industry.

Modification of conditions of gas supply licences in relation to deemed contracts (section 13)

43. The proposed Bill would allow the Utility Regulator to modify gas licences, following consultation and with the Department's consent, in connection with the deemed contract provisions.

44. We note that the Utility Regulator's powers would also only be exercisable during the first 18 months of commencement.

45. PSL accepts section 13 of the proposed Bill on the basis that licence modifications are by agreement with the holder of the licence similar to the provisions in the Gas Act and the Electricity Order.

Damage to Gas Plant (section 10) and Powers of entry (section 14)

46. PNG and PSL are fully supportive of the proposal to amend the natural gas powers of access legislation in Northern Ireland.

47. Powers of access provisions are required to help ensure the health and safety of natural gas customers and the general public.

48. One of the requirements of PSL's licence requires PSL to "use all reasonable endeavours to ensure that at intervals of not more than 2 years, an inspection of the meter and associated installation at any premises for which it is the gas supplier shall take place..." There are currently no legislative provisions which allow PSL access to a property to inspect a meter as there are in the electricity sector.

49. For PNG, at the end of 2009 there were around 130,000 connections to its network and around 120,000 of these were domestic consumers. PNG, who own the asset, should have rights to inspect that asset to ensure that, from a safety perspective, the installation has not been interfered with and is operated as designed to operate. Powers of access provisions are required to ensure that PSL and other suppliers are granted access to such properties to inspect PNG's meter and associated installation and to also allow PNG to inspect the asset it owns.

50. A person authorised by an electricity distributor can enter premises at all reasonable times to ascertain the register of any electricity meter and remove, inspect or re-install the electricity meter.

51. PNG and PSL welcome the proposed Bill which ensures that these same provisions apply for the natural gas industry.

52. Damage to gas plant including meter tampering is a subset of these provisions. Meter tampering is a dangerous activity, posing danger to both life and property. Anyone who tampers with a meter is endangering the safety of consumers, members of the public and PNG's network. We therefore support section 10 of the proposed Bill which would find a person who intentionally or by culpable negligence damages any gas plant, guilty of an offence and liable on summary conviction to a fine.

53. It is also useful to consider disconnections in context. PSL or PNG will disconnect a property for a number of reasons including: disconnections arising as a result of vacant properties where there is no gas burn; disconnections requested by customers; disconnections required to ensure safety to life and/or property; disconnections arising as a result of no gas consumption recorded through the meter etc. The overall disconnections within the PNG licensed area are insignificant in comparison with the total customers connected to the network.

Storage of gas (section 15)

54. No comment.

Appointment of meter examiners (section 16)

55. All relevant metering functions in Great Britain have been transferred from Ofgem to a Government Department.

56. This Government Department delegates responsibility to the National Measurement Office.

57. It therefore seems reasonable for the Utility Regulator to retain responsibility for meter testing and be allowed to delegate this responsibility.

58. As the provisions of Article 22 of the Gas Order continue to apply following delegation of functions, PNG and PSL accept the provisions within the proposed Bill.

Special Administration Regime for Protected Energy Companies (sections 17 – Schedule)

59. There are many provisions contained within existing legislation and within licences of regulated utilities to safeguard the interests of consumers in the unlikely event that a gas or electricity network company was experiencing financial difficulties. These provisions make the Utility Regulator aware at the earliest opportunity to enable it to take mitigating action.

60. We note that the provisions within the proposed Bill generally replicate the provisions of the Energy Act 2004 in Great Britain.

[1] 2006 Northern Ireland House Condition Survey

[2] English House Condition Survey data for 2007

Appendix 4

Memoranda and Papers from DETI

13 May 2009 - Briefing from DETI re: Energy Bill Proposals



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**Enterprise, Trade
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Mr. Jim McManus
Departmental Committee Clerk
Enterprise, Trade and Investment Committee
Northern Ireland Assembly
Parliament Buildings
Stormont
BELFAST
BT4 3SW 13 May 2009

Dear Jim

Gas (Northern Ireland) Order 2009

The Department of Enterprise, Trade and Investment proposes to introduce primary legislation principally relating to the natural gas industry in Northern Ireland.

Therefore, the Department attaches a paper at Annex A summarizing the primary legislation policy proposals for consideration by the ETI Committee. If the Committee feel it would be beneficial, Departmental officials would be available to provide verbal briefing on the policy proposals.

The Department proposes to submit an Executive Paper for their consideration on Thursday 2 July 2009, seeking approval to carry out a statutory consultation exercise in relation to the legislation policy proposals.

If you require any further information please contact myself by telephone 028 90529272 or e-mail fred.frazer@detini.gov.uk

Yours sincerely

Fred Frazer

Energy Division
Department of Enterprise, Trade and Investment

RESTRICTED – POLICY

Annex A

DETI: Proposed Gas Bill Provisions

1a. Powers of Access

Background

1. In October 2007, Phoenix Natural Gas (PNG) wrote to the Department pointing out a perceived discrepancy in the law relating to the rights of gas licence holders to enter premises where customers might be tampering with their gas meters. PNG stated that this practice has serious safety implications for the customers and the community as well as resulting in costs and lost revenue for gas companies.
2. PNG pointed out that at present there is no provision within the Gas (Northern Ireland) Order 1996 to allow them and other licence holders the powers of entry to properties for inspection purposes if they suspect customers of meter tampering.
3. Under Schedule 5 of the 1996 Order "Powers of Entry, etc" the Department may by regulation make provision for empowering any person authorised by the relevant authority to enter premises to examine and test gas fittings and systems, however paragraph 4 (5) states "The powers conferred by this paragraph may only be exercised where the relevant licence holder has reasonable cause to suspect that there may be a danger to life or property in connection with the presence of gas on the premises in question".
4. Therefore the Gas Order does not allow the licence holder rights of access if they suspect customers of tampering with the gas meter and fittings and there is no obvious signs i.e. smell of gas, suggesting danger to life or property. PNG has sought to obtain a warrant from a judge in chambers in circumstances where they suspected meter tampering and this has been denied on the grounds that there was no apparent danger to life and property.

Comparative Position

5. This situation is contrary to the position for the electricity industry as set out in Schedule 6 of the Electricity (Northern Ireland) Order 1992. This legislation allows an electricity distributor to recover the value of any electricity illegally taken and under paragraph 7 of Schedule 6 for a person authorised by an electricity distributor to enter any premises at all reasonable times to ascertain the register of any electricity meter and remove, inspect or re-install any electricity meter. This power under paragraph 11 of Schedule 6 is granted by a warrant issued by a Justice of the Peace who is satisfied that admission to the premises is reasonably required i.e. that the electricity distributor is suspicious that electricity is being taken illegally. The power is not conditional on there being a danger to life and property.

6. In Great Britain Paragraph 26 (2) of Schedule 1 of the Gas Act 1995 allows an officer authorised by the public gas transporter or gas supplier, after 24 hours' notice to the occupier, to enter the premises for the purpose of removing the meter or other gas fitting.

7. In the Republic of Ireland Section 16 of the Energy Miscellaneous Act 1995 allows an authorised officer from both "Bord Gáis Éireann" and "Electricity Supply Board" who suspects with reasonable cause that an offence has been or is being committed may enter land, premises or vehicles and may search the land, premises or vehicle and seize any thing he or she finds there.

Legislative Proposals

8. It is therefore proposed to amend the legislation in Northern Ireland to allow gas licence holders the right to enter premises if they suspect that gas meters or fittings are being tampered with. This legislation will be consistent with the approach taken in the 1992 Electricity Order.

9. At present there is no criminal offence in respect of damage to gas plant and it is proposed that legislation similar to Paragraph 13 of Schedule 6 of the Electricity Order 1992, as contained in the Electricity Regulations (Northern Ireland) 2007, will be introduced. This will mean that anyone who intentionally obstructs a person authorised by a gas licence holder shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

10. Similarly, there is currently no equivalent provision in the Gas Order 1996 to the provisions of paragraph 14 of Schedule 6 of the Electricity Order 1992, which makes certain electrical equipment belonging to local electricity companies exempt from judgment and bankruptcy processes. It is proposed that this will also be duplicated in the new Gas Bill provisions.

1b. Guaranteed Standards of Performance

Background

1. The Gas (Northern Ireland) Order 1996 contains measures designed to provide consumer protection within the gas industry. Article 5 (4) of the Order specifies that in performing their duty the Department and the Northern Ireland Authority for Utility Regulation (NIAUR) shall take into account, in particular, the interests of those who are chronically sick, disabled or of pensionable age. The Utility Regulator has now asked that these consumer protection measures be enhanced by introducing legislative provisions that will empower the Department and the Utility Regulator to determine standards of performance in connection with the activities of gas suppliers and those who convey gas.

2. This will require the introduction of both individual and overall standards of performance by the gas industry. Individual standards will be applicable in relation to each customer separately and failure to meet individual standards will give rise to a duty to pay compensation. However current overall standards are typically percentage targets to be achieved by companies for overall customers or classes of customers. Gas licence holders would be subject to a duty to conduct their businesses with a view to achieving overall standards of performance which would be published.

Comparative Position

3. The proposed establishment of guaranteed standards for the Northern Ireland gas industry will replicate what is already provided in legislation for the electricity industry. Articles 42 to 45B of the Electricity (Northern Ireland) Order 1992, and provides NIAUR with the power to make Regulations which set out the standards of performance expected in the electricity supply and distribution industry. These can be found in the Electricity (Standards of Performance) Regulations (Northern Ireland) 1999 and cover issues such as supply restoration; voltage complaints; provision of new supply; reconnection after non payment; re-siting meters; change of meter on change of tariff; meter reading and responding to letters from customers.

4. In Great Britain, the Gas (Standards of Performance) Regulations 2005 prescribe the sum which gas suppliers or gas transporters must pay to a customer by way of compensation for failure to meet specified standards of performance in respect of the services to be provided by such suppliers or distributors. The sum payable differs between domestic and non-domestic customers, and between standards.

5. In the Republic of Ireland the main gas transmission company, Bord Gais Networks, has a customer's charter which outlines 10 guaranteed performance standards and how they will provide compensation for failing to meet these standards.

Legislative Proposals

6. It is proposed to set out procedures for prescribing and determining these overall standards of performance. In doing this Utility Regulator will arrange for the necessary research to be carried out, to publish their proposals and to consult with others, including the Consumer Council, prior to determining the required standards of performance and making Regulations.

7. In order that customers can be aware of what level of performance to expect, the proposed legislation will provide that, under the direction of the Utility Regulator, gas suppliers will inform their customers of the standards applicable and the level of performance to be expected as regards those standards. The Authority will also arrange to monitor the levels of overall performance achieved and the compensation paid out by gas suppliers for failure to meet individual standards.

8. As it is likely that disputes may arise over the execution of these standards of performance, it will be necessary for the gas suppliers to establish procedures for dealing with complaints. If the disputes cannot be resolved between the customer and the gas company, it is proposed to include in the legislative provisions that they are referred to the Utility Regulator for determination.

1c. Gas Meter (Specification, Certification and Appointment of Meter Examiners.)

Background

1. At present Article 22 of the Gas (Northern Ireland) Order 1996 states that responsibility for approval, testing and stamping of gas meters lies with the Northern Ireland authority for Utility Regulation (NIAUR). This legislation also includes provision for the Utility Regulator to appoint meter examiners (who will be a member of the Regulator's staff) to carry out these functions. When it was introduced in 1996 this Article replicated the procedures being followed in .

2. Over the past thirteen years these functions have rarely if ever been exercised by the Regulator and no meter examiners have ever been appointed. Meter testing and the installation of the appropriate meters in commercial and domestic premises have been left to the industry to oversee.

Comparative Position

3. Recently the Utility Regulator in Great Britain (Ofgem) and the respective GB Department have concluded that these technical metering functions are no longer the proper domain of the Regulator whose main expertise is seen to be in economic matters. Through the Energy Act 2008 they have, from December 2008, transferred all relevant metering functions to the Secretary of State for Innovation, Universities and Skills who has delegated the responsibility to the National Measurement Office (NMO).

4. The NMO operates on a UK wide basis for traditional weights and measures enforcement, however for gas metering it only operates at present in Great Britain. There is no corresponding agency carrying out these functions in Northern Ireland.

Legislative Proposals

5. It is therefore proposed, rather than transfer the responsibility to a Government Department as has been done in GB, to retain the responsibility for metering functions within the responsibility of the Northern Ireland Utility Regulator, but to give the Utility Regulator the ability to delegate these functions to an appropriate body best equipped to perform such tasks i.e. the National Measurement Office.

6. Appropriate amendments will be made to the Gas (Northern Ireland) Order 1996 to facilitate these arrangements.

1d. Deemed Contracts

Background

1. The Department is currently introducing legislation to allow the Utility Regulator to appoint a Supplier of Last Resort, in effect an alternative supplier, in the event of a gas supplier being unable to meet their contractual obligations. As part of that legislation, it is deemed that the consumer will have a contract with the new supplier without any paperwork having been exchanged. The gas industry is now keen that this should be extended to more general situations.

2. Typically a deemed contract would occur where a customer moves into a new property and has not agreed contractual terms with a supplier who is supplying gas to that property or where a fixed term contract expires. In such instances there are no explicit provisions for terms and conditions for the period immediately after expiry of the contract. In such circumstances the customer will be 'deemed' to have automatically taken over the contract with the gas supplier of the previous occupant of the property. In financial terms, the customer will by default be placed on a 'deemed tariff' with that supplier.

3. A deemed contract seeks to provide a sound and binding basis upon which suppliers will supply customers where a contract has not been expressly agreed. It also provides suppliers with a clear basis upon which to charge for that supply. As by definition the terms and conditions of a deemed contract have not been expressly agreed between suppliers and customers, it is prudent and appropriate for these terms and conditions to be subject to regulation.

Comparative Position

4. Schedule 6 of the Electricity Regulations (Northern Ireland) 2007 makes provision for deemed contracts to exist between a new consumer and an electricity supplier. Therefore the introduction of similar legislation for the gas industry will replicate what already exists for electricity.

5. In Great Britain, Schedule 2B paragraph 8(1) of the Gas Act provides 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 they began to supply that gas or electricity. Ofgem (the GB Utility Regulator) considers that deemed contracts play a vital role in the energy market. The nature of supply is such that it would be inefficient, given current metering technology, to disconnect a premise when a customer had moved out and reconnect the premises upon application for a contract by a new occupant. In addition, suppliers may not always be aware of customer movements until a period of time has elapsed after the event.

Legislative Proposals

6. It is therefore proposed to introduce legislation which will introduce the system of deemed contracts to the Northern Ireland gas industry. A sequential step following the introduction of enabling legislation would be the creation by the Utility Regulator of suitable licence conditions which would place a requirement on suppliers to ensure that their domestic contracts include terms that correspond as near as may be to the requirements on deemed contracts.

1.e Gas Safety Management

Background

1. Article 7 (1) of the Gas Safety (Management) Regulations (Northern Ireland) 1997 states that "It shall be the duty of Phoenix Natural Gas Limited to provide a continuously manned telephone service (which shall be contactable from any place within Northern Ireland by the use of one telephone number) for enabling persons to report an escape of gas from a network or from a gas fitting supplied with gas from a network."

2. At present Phoenix have gone out to tender and with the agreement of the Utility Regulator and the Health and Safety Executive NI, have subcontracted this duty to National Grid in Great Britain who deals with the phone calls from their centre at Hinckley.

3. This legislation was introduced at a time when Phoenix was the only natural gas supplier in Northern Ireland, with no prospect of any other licences being awarded; therefore they were specifically named and given responsibility for this important gas safety feature. These Regulations also reflected the position in Great Britain at that time where British Gas plc was named as the company responsible for gas safety management.

4. However other suppliers such as firmus energy have now come into the Northern Ireland market and while Phoenix have an agreement with the other suppliers to use their safety

helpline with a single 0800 number for the whole of Northern Ireland, they have recently lobbied for the wording of the legislation to be changed to better reflect the current position in the Northern Ireland gas market.

5. A single telephone number for emergency response to gas escapes is seen as the best practical option for public safety, ensuring a uniform approach across NI.

Legislation proposals

6. The Gas Bill will contain a clause, amending Regulation 7 of the Gas Safety (Management) Regulations (Northern Ireland) 1997. The amendments shall have the effect of removing the duty to provide a continuously manned telephone service from Phoenix Natural Gas Ltd and placing a duty on all licence holders to agree to and contribute to a single system as before. Consequential amendments will change the wording of sub paragraphs 7(2), 7(3) and 7(8) to remove references to Phoenix Natural Gas Ltd and replace them with references to the provider, for the time being, of the telephone answering service.

7. This change in duty will not place additional costs on licence holders as the cost is already negotiated and shared between licence holders. Any new licence holder will be required to support the answering service financially.

2. Special Administration Regime

Background

1. If a company fails in normal circumstances, the duties of a receiver or administrator appointed under the Insolvency Act is to obtain the best possible return for the company assets on behalf of the creditors and shareholders. However this could act against the wider public interest, especially if the company involved is an energy utility and security of electricity or gas supply to thousands of consumers were to be threatened. To provide protection against this, the Utility Regulator has asked that consideration be given to the introduction a Special Administration regime for energy companies in Northern Ireland.

2. A Special Administration regime is a mechanism designed to safeguard the provision of essential electricity and gas supplies, where responsibility in the event of a major energy network company becoming insolvent is transferred to a special administrator, appointed upon order of the High Court. The primary duty of this special administrator would be to ensure that services continue to be provided, placing the wider public interest alongside (or ahead of) those of the creditors and shareholders in this special case. This would allow the business to continue to operate and supply electricity and gas to consumers.

3. The role of the special administrator would closely resemble that of a Regulator rather than a Receiver, in that the priority would be to ensure continuity of essential functions. It would not however be appropriate to appoint the Utility Regulator to this role, so the special administrator would be someone with regulatory experience or someone with experience of running a utility company.

4. In terms of costs and benefits of a special administrator regime, there should not be any significant costs with introducing enabling powers in primary legislation. The special administrator would require a funding provision from government, but this would be recouped back from the company and the benefits to society would be substantial in protection against a lengthy interruption of supply, and the inherent risk to public well-being which this would cause.

5. At present, the general insolvency law would apply to network licensees without variation. The Insolvency legislation (mainly provided under the Insolvency (Northern Ireland) Order 1989) primarily serves to protect shareholders and creditors whose combined interests would outrank and outweigh the interests of consumers. This represents a deficiency in the regulatory framework governing the gas and electricity industries. The water industry is now better protected by having provision for special administration orders in the Water and Sewerage Services (Northern Ireland) Order 2006.

Comparative position

6. In Great Britain the Energy Act 2004 contains provisions to establish a special administration regime for "protected energy companies" to ensure energy supplies are maintained to consumers.

Legislative Proposals

7. The special administration arrangements in Northern Ireland water and sewerage legislation, and the utility legislation in Great Britain, provide instructive precedent for the introduction of similar legislation in Northern Ireland to protect the local electricity and gas networks. It is therefore proposed to include legislative provisions within the new Gas Bill to provide for similar special administration arrangements for the regulated energy sector (both electricity and gas) in Northern Ireland. Energy Division has liaised with counterparts in the Department's Business Regulation Division in relation to these proposals.

3. Gas Storage

Background

1. The construction of the undersea Scotland to Northern Ireland gas pipeline (SNIP) provides a natural gas supply from Great Britain, and permitted development of a natural gas industry in Northern Ireland from the mid 1990's. Northern Ireland is totally dependent on imported natural gas for power generation, industrial and commercial, and domestic energy use. The power stations at Coolkeeragh in the North West and Ballylumford in East Antrim are gas fired, and in March 2009, there were around a total of 125,000 natural gas consumers in the Greater Belfast, Lisburn and Larne licensed area developed by Phoenix Natural Gas, and in the 10 urban areas outside Greater Belfast being developed by firmus energy.

2. Natural gas resources in Great Britain have been declining in recent years, and the UK is now a net importer of gas. This has resulted in significant investment in gas storage in Great Britain, from which Northern Ireland can also benefit. However, there has been increasing interest in the development of gas storage in Northern Ireland, which would provide additional security of energy supply for both Northern Ireland and the Republic of Ireland, as both receive the bulk of their natural gas supplies from Great Britain, even though the Republic has some indigenous gas resources.

3. There is current interest in developing gas storage in the East Antrim area in underground caverns created by solution mining of salt strata. The East Antrim area has geology which is unique on the island, consisting of deep salt sequences in the Larne/Islandmagee areas, and which offer potential for energy storage. With this increasing level of interest in developing gas storage, the Department and the Northern Ireland Authority for Utility Regulation (NIAUR) wish to ensure that the legislative and consenting provisions are sufficiently comprehensive to facilitate the construction, operation, maintenance, and eventual dismantling and abandonment of a gas storage facility in Northern Ireland.

Current Provisions

4. While gas storage is not a licensable activity in Great Britain, Article 8(1) of the Gas (Northern Ireland) Order provides for the licensing of a gas storage facility in Northern Ireland. Article 35 of the Order provides for consent by the Northern Ireland Authority for Utility Regulation (NIAUR) for construction of gas pipelines and Article 37 for NIAUR consent for construction of a gas storage facility. Article 6(1) (b) of the Gas (Northern Ireland) Order 1996 relates to it being an offence to construct/operate a gas storage facility without the necessary approvals. Article 13 of the Gas Order, which relates to the compulsory purchase and streetworks powers in Schedules 2 and 3, will be available to a gas storage licensee to the extent as provided in their licence conditions.

5. As gas storage has been brought within the licensing regime of the Gas Order, it must comply with the appropriate Articles within the EU Gas Directive 2003/55/EC. Article 4 (Authorisation Procedure) of the Gas Directive requires Member States to lay down objective and non-discriminatory criteria to apply to applications for a licence to build or operate natural gas facilities. The Gas Order already contains provisions to enable compliance with Article 4 of the Directive, and the existing licence criteria will be amended to include for a gas storage facility. This will not require a legislative change.

6. It should be noted that the Gas (NI) Order provisions apply to an on-shore gas storage facility, including areas of inland sea, such as Larne Lough. Consents for any off-shore gas storage facility will be dealt with under off-shore gas storage and gas unloading provisions being implemented by the Department of Energy and Climate Change (DECC) in London, under provisions within the UK Energy Act 2008. This Act also amended the definition of a gas storage facility in Article 3(1) of the Gas (NI) Order 1996 to exclude any gas storage facility sited within UK territorial waters.

7. It is considered that Part 4 of the GB Petroleum Act 1998 relating to the abandonment of petroleum infrastructure applies to Northern Ireland internal waters which are tidal and in this respect would deal with proposals affecting a sea lough, such as Larne Lough. While further legislative provisions are not thought to be necessary, the abandonment regime is being considered in conjunction with the Crown Estate.

Off-Shore Gas Storage Regime

8. The UK Energy Act 2008 introduces a new framework for the off-shore storage of natural gas and the unloading off-shore of natural gas including in the form of liquefied natural gas (LNG). Under this new framework, the UK Government has introduced a licensing scheme for these activities, and is to be administered by DECC. The licensing scheme for gas storage and unloading extends to a Gas Importation and Storage Zone (GISZ) established under the new UK Energy Act, and will include the area of the UK territorial sea, which together will cover an area extending up to 200 nautical miles from the baselines of the territorial sea. The Food and Environment Protection Act (FEPA) will still apply to inland waters within Northern Ireland, including a sea lough such as Larne Lough, and will be administered by the Department of Environment in Northern Ireland. Additionally, the Energy Act 2008 does not disapply FEPA from gas storage activities in the Northern Ireland territorial sea, though other aspects of the consenting regime will be administered by DECC.

Environmental / Marine Issues

9. The Department of Environment (DOE) in Northern Ireland has responsibility for planning consents, marine legislation, and FEPA (acting on behalf of the Department for Environment,

Food and Rural Affairs) in London. Developers of any gas storage facility will have to comply with DoE legislation and those aspects of the legislation which DoE administers, such as FEPA. Similarly, a gas storage facility in Northern Ireland will have to comply with DOE Planning requirements, and any necessary environmental impact and habitats assessments.

10. As regards FEPA's successor, marine licensing under a new UK Marine Bill which will extend to Northern Ireland, will continue the position where marine licensing will apply to Northern Ireland's internal waters, and the territorial sea, including for gas storage and unloading.

Legislative Proposals

11. The Department is satisfied that in general, the legislative and consenting provisions for gas storage are sufficiently comprehensive. However to deal with minor areas of weakness in the legislative regime for gas storage, the Department's proposals are principally related to ensuring third party access to off-shore gas storage in the Northern Ireland territorial sea, to provide clarification on who would be guilty of the offence of storing gas without a licence if such an offence occurred, to deal with any discrepancies in relation to the application of FEPA and the Energy Act 2008 in relation to the territorial sea, and any additional provisions deemed necessary to reinforce the abandonment regime.

12. The Department's current understanding is that no additional legal provisions are needed for storage of compressed air in Northern Ireland and off-shore carbon storage falls within the UK Energy Act 2008, however these issues will be considered further in development of the Department's Gas Bill proposals.

7 December 2009 - Gas Bill public consultation

Jim McManus
Clerk
Enterprise, Trade and Investment Committee
Northern Ireland Assembly
Parliament Buildings
Stormont
BELFAST BT4 3XX 7 December 2009

Dear Jim

Gas (Northern Ireland) Bill

As you are aware, the Department of Enterprise, Trade and Investment proposes to introduce primary legislation principally relating to the natural gas industry in Northern Ireland. The matter was discussed at the ETI Committee on 28 May 2009.

Following a 12 week public consultation which ended on 25 September 2009 the Department attaches a report at Annex A of the responses to this exercise for consideration by the Committee. If the Committee feel it would be beneficial, Departmental officials would be available to provide verbal briefing on the report and the primary legislative process.

If you require any further information please contact either me or Fred Frazer on 028 90529272 or e-mail fred.frazer@detini.gov.uk

Yours sincerely

Jenny Pyper

Head of Energy Division
Department of Enterprise, Trade and Investment



Gas Bill –

Policy Consultation

Analysis of consultation responses

Responses to a consultation on the proposed implementation of legislation, principally related to the natural gas industry, and to a lesser extent the electricity sector, in Northern Ireland

November 2009

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Additional Issues

DETI's Initial Response to the Consultation Exercise

Following the consultation period and analysis of the responses DETI has drawn on the consultation responses in continuing to develop a policy on each of the seven policy issues for inclusion in the proposed new Gas Bill.

We are very grateful for the number and quality of responses to this consultation. We will publish the responses in due course in full on the Departmental website at www.detini.gov.uk.

The summary of responses shows that the majority of respondents agreed with the proposals set out in the consultation document on most issues. The majority of respondents supported the seven policy proposals and there was significant support for introducing the Gas Bill.

Background

On 1 July 2009, DETI launched a public consultation proposing to make a number of amendments to the Gas (Northern Ireland) Order 1996 to update the legislation. It is intended that these amendments will bring the local natural gas industry into line with the Northern Ireland electricity sector and the utility regime in Great Britain. One of the issues will also amend the Electricity (Northern Ireland) Order 1992.

The consultation document set out seven major issues for inclusion in the proposed new Gas Bill. These are:

1. Powers of Access to premises for gas companies where meter tampering is suspected;
2. Guaranteed Standards of Performance for the gas industry which will provide consumers with specific, measurable, achievable, reliable and timely standards to gauge the level of service being provided by different companies;
3. To provide the Utility Regulator with authority to delegate Gas Meter Stamping and Testing functions;
4. Provision for Deemed Contracts between gas companies and customers. A deemed contract exists between a consumer and a gas supply company where there is no written or verbal agreement having been exchanged, e.g. where a change of tenancy occurs;
5. Amendment to Gas Safety Management provisions in relation to reporting gas escapes. This maintains a single emergency contact number but places a duty on all Northern Ireland gas licence holders to contribute towards an emergency contact system;
6. Special Administration Scheme provisions for the natural gas and electricity industries. This is a mechanism designed to safeguard the provision of supplies by local electricity and gas networks. Responsibility for a utility which becomes insolvent will be transferred to a Special Administrator appointed by the High Court and the Administrator would put the consumers' interests above those of creditors/shareholders; and
7. Updating provisions for Gas Storage to ensure that legislative and consenting provisions are sufficient to facilitate the construction and operation of a gas storage facility in Northern Ireland.

The consultation exercise closed on 25 September 2009, with 13 responses received, however two responses offered no comment, and are not included in the report. Seven responses were

from the energy industry, five responses from the public sector, and one comment was also received by the Citizens Advice Bureau.

This report is a summary analysis of those responses. Specific details of responses are not given as the purpose is to identify bodies of opinion. Each of the questions raised in the consultations document is addressed, looking at any response either directly or those that touched on topics directly related to the question. Some respondents answered every single question, whilst others replied at an overview level rather than at a question by question level.

Respondents

Energy Companies

- Airtricity
- Bord Gáis Networks
- Firmus Energy
- Northern Ireland Electricity PLC
- Northern Ireland Energy Holdings
- Phoenix Energy Holdings plc
- Viridian Power and Energy

Public Sector

- Consumer Council
- Insolvency Service, DETI
- Northern Ireland Authority for Utility Regulation

Other

- Citizens Advice Bureau

Proposals for Primary Legislation

i. Overview of Consultation Document

The consultation paper set out the potential policy options for the seven issues for inclusion in the proposed new Gas Bill and sought the views of consultees on all these issues.

Consultees were also asked to give their view on the draft Regulatory Impact Assessment and EQIA screening form which were attached to the consultation document.

Respondents offered a wide range of opinions on the best approach in how to implement each of the seven proposals into Northern Ireland legislation.

ii. Powers of Access

Should gas companies be granted extended powers of access?

Should the reason for access be extended beyond "danger to life and property" to circumstances where there is suspicion of meter tampering?

Should certain gas equipment belonging to gas companies be exempt from judgment and bankruptcy processes?

All the respondents agreed that this proposal would have a positive effect on the grounds that it promoted public safety for both individual gas customers and the wider community. The gas companies welcomed the proposal as it will clarify the position and bring Northern Ireland legislation into line with that in the electricity industry, and the gas sector in Great Britain and the Republic of Ireland. They also indicated experience showed that existing powers had proved to be ineffective in reducing gas meter tampering and that some customers appear to believe that there is a balance of benefit to be had from interfering with their meters. The consumer organisations also supported this proposal, but qualified their agreement by urging that all licence holders should be encouraged to act in a reasonable and fair manner and to only use these powers when it was absolutely necessary and to ensure that customers were not left without a supply of gas until such times as it has been proven that meter tampering has occurred. The Department will take account of these comments when drafting the legislation and is aware of the previous concerns expressed by the Committee in ensuring the rights of access powers are used in a reasonable and proportionate manner. Current legal provisions allow gas companies to obtain a warrant to enter premises if there is a danger to life or property, and they are also required to leave the premises secure and to make good any damage caused. Similar safeguards will apply to the legislative amendments proposed for extended powers of access.

All parties were in favour of the introduction of protection against loss of equipment under the Judgements Enforcement (Northern Ireland) Order 1981 and under bankruptcy proceedings as is provided for NI electricity companies and GB gas companies. It was stressed that customer bankruptcy should not result in removal of equipment that was necessary for safety or would be required for the purpose of providing a gas supply to a subsequent occupier of the premises. Some respondents felt that it would also be unfair to require the majority of customers to continue paying for equipment whose value remains in the regulatory asset base after the physical assets had been removed from the network.

iii. Guaranteed Gas Standards of Performance

Should gas companies operating in Northern Ireland be required to set guaranteed standards of performance?

Should gas companies be required to financially compensate customers in Northern Ireland for failing to meet agreed standards?

What other measures could be introduced in place of financial compensation yet still ensuring that optimum service is provided?

All respondents generally supported the introduction of common service standards for all suppliers, in line with established requirements in the retail electricity market and the consumer organisations felt that it was long overdue. Several gas companies stressed that it is important that suppliers are not unfairly penalised for service failures resulting from non-performance by monopoly, third-party service providers. They also commented that the natural gas industry is committed to delivering a high quality of service, however the introduction of universal standards of performance across the industry may provide for more transparency should consumers wish to benchmark the performance of companies.

The proposal to introduce financial compensation to consumers for company failure to meet guaranteed standards did not receive universal approval, with the gas companies being opposed to the suggestion on the grounds that companies could be held to account for circumstances over which they had no direct control. Consumer organisations on the other hand felt that a financial penalty is the main incentive for any company to improve service delivery and do not believe any other measure will achieve this.

The source of the financial compensation was queried by a number of parties. The gas companies suggested that consideration should be given to recovering this from their cost base whereas consumer organisations strongly stressed that it should come out of company profits. As this will ultimately be a matter for the Northern Ireland Authority for Utility Regulation their advice was sought. The Utility Regulator's Guaranteed Service Standards (GSS) cross directorate working group will be consulting with the gas and electricity industries and the general public on the issue of Guaranteed Standards in the near future, and taking into consideration the feedback received, will decide upon the GSS to be introduced for the gas industry. The Utility Regulator has advised that there is no allowance in the electricity industry price control for guaranteed standards of service payments, therefore the costs have to be paid by the company from their profits.

The gas companies also argued that any costs they incurred from the introduction of this proposal i.e. writing to consumers advising them of the applicable standards; putting in place additional systems, processes, procedures and resources should be allowed in each company's cost base. This will also be covered in the Utility Regulator's consultation.

IV. Special Administration Regime for Natural Gas and Electricity sectors

Should gas and electricity companies be protected by a special administration regime if they become insolvent?

Are there any other suggestions for achieving protection of customers if company failure were to occur?

Given the current uncertain economic climate that businesses are operating in, all respondents gave their general support for the proposal to implement a special administrative regime, however several reserved the right to comment more specifically at Committee Stage on the proposal, when detailed information on how the regime would operate in practice is available. Consumer groups felt that protection was required for consumers who had paid for energy in advance.

Colleagues in the DETI Insolvency Service recognised the importance of preserving continuity of energy supplies in the event of the provider becoming insolvent and confirmed that there is no guarantee under the Insolvency (NI) Order 1998 that an administrator, who would be pursuing a different agenda, might not temporarily or permanently windup and close an energy company. The DETI Insolvency Service had no objections to the introduction of procedures similar to those currently used in the water industry which have provided enhanced customer protection.

The DETI Insolvency Service also suggested that consideration should be given to closing off assets to all forms of corporate insolvency procedures. They also suggested that deliberation should be given to cases where a major energy company decides to cease trading or where the major centre of the companies operations is in another EU country or outside the EU altogether.

Another respondent questioned whether this initiative was necessary for gas suppliers if Supplier of Last Resort Regulations are in place. Several companies sought confirmation that this legislation would not preclude a trade sale. The Department will bear these points in mind when drafting legislation.

v. Gas Meter (Stamping & Testing)

Should the Utility Regulator retain responsibility for meter testing?

Should the Utility Regulator be allowed to delegate the function of gas meter testing and stamping?

Do you agree that this will fully facilitate the Utility Regulator's responsibility for gas meter testing and stamping?

All the respondents consider that the Northern Ireland Authority for Utility Regulation (NIAUR) should retain responsibility for meter testing and stamping but agree with the proposal that NIAUR should be allowed to delegate the service delivery to a competent organisation. The Regulator has agreed to this, however has asked if the Department can have discussions with the appropriate Department in Great Britain and give consideration to having this function removed from NIAUR responsibility in future and treated on a United Kingdom wide basis. The Department has initiated these discussions, but at the very least is likely to allow the Utility Regulator the authority to delegate this responsibility.

vi. Deemed Contracts

Do you agree that the proposed deemed contracts policy will provide both the gas industry and gas consumers in Northern Ireland protection?

Do you anticipate any concerns from either gas consumers or gas suppliers in relation to in the introduction of this policy?

All the respondents agreed that there was a need to introduce legislation which would bring the gas sector into line with the arrangements in the electricity sector. It was accepted by all parties that the new proposals would provide both gas customers and the gas industry with additional protection and clarity in situations where a contract has not been explicitly agreed between the customer and the supplier e.g. change of tenancy.

It was suggested by several gas companies that it might be necessary for them to differentiate the terms and tariffs of deemed contracts from the standard contract arrangements, to encourage customers to enter into more formal contract arrangements. This was strongly opposed by consumer organisations who urged that customers should not be penalised in terms of tariffs and should be moved on to an agreed contract and tariff as soon as possible. They also proposed that the arrangements for deemed contracts should be developed in consultation with consumer bodies and that the conditions of the contracts should be provided to the customer on request and placed on the energy company website. The Department will take these concerns into consideration in drafting the Bill provisions.

VII. Gas Safety Management

Do you agree that this responsibility should be shared by all gas licence holders for the cost of providing a single telephone contact for gas emergencies rather than it being the sole responsibility of Phoenix Natural Gas?

Are there any other suggested arrangements?

All the respondents accepted that it made good sense for there to be a single telephone contact point to be used in a gas emergency. The majority agreed that while the current pragmatic system organised by Phoenix Natural Gas operated satisfactorily it would be desirable for the arrangements for joint procurement and cost sharing to be covered on a legal basis. One party did however stress that these changes were unnecessary and would overly complicate the current system. DETI Energy Division and the Health and Safety Executive (Northern Ireland) are currently in discussions on how the legal provisions in the Bill should be worded so that the best of the current system can be retained, while ensuring that Phoenix is not the only named company in relation to the responsibility.

viii. Gas Storage

In addition to the issues identified above, are there any other legislative provisions which are considered necessary for a gas or energy storage facility?

All parties fully supported the introduction of any additional legislative arrangements to facilitate development of gas storage infrastructure in Northern Ireland, and to ensure the inclusion of third party access rights. Several commented that third party access is essential to maximise customer benefit as well as being required by European law. One respondent noted that previous consideration was given to ring-fencing funds set aside for decommissioning storage facilities and associated plant, equipment and pipework in the event of the contractor's insolvency. The Department will consider these views when drafting the legislative provisions.

Additional Issues

In making their response one party suggested that the general duties of the Department and the Utility Regulator are not well framed for natural gas and should be amended. They pointed out that currently there is a duty to promote effective competition in supply for electricity, but not for natural gas. They stated that this imbalance needed to be corrected to ensure that there can be no undue discrimination between electricity and gas competition market principles. The Department is currently considering this point and how it might lead to the amendment of the Gas (NI) Order 1996 and the Energy (NI) Order 2003

1 February 2010 - Final Energy Bill Consultation Responses

Mr Jim McManus
Departmental Committee Clerk
Enterprise, Trade and Investment Committee
Northern Ireland Assembly
Parliament Buildings
Stormont
BELFAST
BT4 3SW February 2010

Dear Jim

Energy Bill

As you are aware, the Department of Enterprise, Trade and Investment proposes to introduce primary legislation principally relating to the natural gas industry and to a lesser extent the electricity industry in Northern Ireland.

This Bill was previously called the Gas Bill at the time of seeking approval from the Committee to proceed with the policy consultation. During the legislative drafting process, the name of the Bill was changed, by the Office of the Legislative Counsel (OLC), to the Energy Bill as it will incorporate legislative provisions for a special administration regime to include the electricity and natural gas sectors, in addition to a range of gas industry issues.

The ETI Committee considered a report in relation to a summary of consultation responses on 14 January 2010 and advised that they would like to see the full responses to the policy consultation before the Bill Committee Stage. Therefore the Department attaches a list of final policy decisions (Annex A) and a table of the full responses (Annex B) to this exercise for consideration by the Committee. If the Committee feel it would be beneficial, Departmental officials would be available to provide verbal briefing on the table of responses and the primary legislative process.

If you require any further information please contact either myself or Fred Frazer on 028 90529272 or e-mail fred.frazer@detini.gov.uk

Yours sincerely

Jenny Pyper

Head of Energy Division
Department of Enterprise, Trade and Investment

Annex A

DETI Energy Bill (formerly the Gas Bill) - List of Final Policy Decisions

Policy Proposal

Powers of Access to premises for gas companies

Policy Decision

The main objective in the legislation will be to enable gas companies in Northern Ireland legally to enter customers' premises where:

- a customer has damaged, or a gas company suspects a customer of damaging, equipment provided by the relevant gas company;
- a gas company wishes to ascertain the register of any gas meter and, in the case of a pre-payment meter, remove any money or tokens or cards belonging to the gas supplier;
- a gas company wishes to disconnect premises or remove equipment in the event that a supply of gas is no longer required at the relevant premises;
- a gas company wishes to place new gas plant in the place of, or in addition to, existing gas plant at the relevant premises.

The Rights of Access provisions for the natural gas industry will be analogous to existing provisions within the Electricity (NI) Order 1992. In order to exercise this power, there will be safeguards to

Policy Proposal

Policy Decision

protect individuals from unwarranted intrusion. The gas supplier requiring entry under the new powers will have to provide evidence of his authority where the owner/occupier requests it or get a warrant from a Justice of the Peace (JP). It is not necessary to get the warrant in an emergency. Also the powers will focus on the purpose that entry is sought for (e.g. reading, removing, disconnecting or inspecting the meter), and provide that such entry may only take place at reasonable times. Another objective is to create a criminal offence in respect of damage to gas plant. Where such an offence has been committed, it is proposed that the relevant gas supplier or conveyer will be empowered to disconnect the relevant premises and to remove the damaged plant. It is also intended that gas companies in Northern Ireland be afforded an increased level of protection by exempting equipment belonging to the gas companies from judgment and bankruptcy processes. These proposed new provisions are intended to create a regime which is analogous to arrangements in the electricity supply industry under the Northern Ireland Electricity Order

Guaranteed Standards of Performance for the gas industry

The main objective in the legislation will be to provide gas customers in Northern Ireland with an enhanced level of consumer protection, primarily by introducing legislative provisions that empower the Utility Regulator and the Department to determine standards of performance in connection with the activities of gas suppliers and conveyers. The provisions will be similar to those for the electricity industry.

Gas Meter Stamping and Testing functions

The main objective in the legislation will be to ensure that the gas metering related provisions in the Gas (Northern Ireland) Order 1996 provide greater flexibility, such that to give the Utility Regulator the power to delegate Gas Meter Testing and Stamping functions to an appropriate body best equipped to perform such tasks.

Deemed Contracts between gas companies and customers

The main objective in the legislation will be to introduce a regime that provides for deemed contracts to automatically arise in either of the following two situations which will also incorporate terms and conditions that are published in advance –

- where a supplier supplies gas to an owner or occupier of premises other than in pursuance of a supply contract. In practice, this situation would arise, for example, where an actual supply contract with the customer has expired, but the customer continues to take gas at those premises. It is intended that the deemed contract should be with that supplier and should arise when the supply begins; or
- where an owner or occupier of premises takes a supply of gas that has not been made by a supplier (but where a supplier has previously supplied gas to those premises). In practice this situation would arise, for example, where a person moves into a house and has not agreed contractual terms with the supplier who supplied the previous owner or occupier of that property. It is intended that the deemed contract shall arise when the new owner or occupier begins to take the supply.

Policy Proposal

Amendment to Gas Safety Management provisions in relation to reporting gas escapes

Special Administration Scheme provisions for the natural gas and electricity industries

Gas Storage provisions

Policy Decision

The Office of the Legislative Counsel (OLC) has advised that the relevant issues in relation to Gas Safety Management should not be carried through in primary legislation and can be amended through subordinate legislation. Therefore the Department will deal with amendments to Gas Safety Management separately from this Bill.

The main objective in the legislation will be to introduce a special administration regime designed to ensure the uninterrupted operation of electricity and gas networks essential to security of supply in the event of actual or threatened insolvency of certain electricity and gas companies. It is intended to give the Courts new powers, including the power to make special administration orders to appoint an administration officer in respect to such companies, resulting in an 'energy administration'. This will restrict the circumstances under which existing insolvency procedures can apply and ensure that on an insolvency matter, the interests of the creditors and shareholders of an electricity or gas network company are not put ahead of the wider public interest. It is also intended that the regime will be funded through financial support provided by the government and by recouping money back from the relevant electricity or gas network company's revenue.

It was originally proposed that the Bill would amend provisions in relation to any potential gas storage facilities which might in future be located in Northern Ireland territorial waters i.e. the off-shore area. The Department is proceeding on the basis that whilst it would be desirable for this to be dealt with in the Bill, this matter should not hold up the progress of the Bill. The proposals were to "future-proof" legal provisions but there are currently no proposals for gas storage in the off-shore area. However the Bill will clarify responsibilities in relation to operators/owners of a gas storage facility, and this is particularly relevant given interest in the potential to develop an on-shore facility in the East Antrim area. The Department is therefore content that the current legislative and consenting provisions are sufficient to allow the construction, operation and decommissioning of an on-shore gas storage facility, including a facility located in an inland Lough within the boundaries of Northern Ireland.

Annex B

Summary of DETI Energy Bill (formerly the Gas Bill) – Policy Consultation Responses - 25 September 2009

General Notes:

1. At the time of the consultation, the Department envisaged that legislation to implement its final policy would be entitled the 'Gas Bill'. It has since been decided that, because of the significance of the introduction of a special administration regime for the gas and electricity sectors, it would be more appropriate for the legislation to be called the 'Energy Bill'. References to the Bill in this paper should therefore be read as references to an Energy Bill.
2. Following consideration of options and suggestions, it should be noted that the Department's proposals in relation to the Gas Safety (Management) Regulations 1997) will not now be included

within the Energy Bill) and will be taken forward via subordinate legislation. Therefore any implementation of the aforementioned policy will be in the form of further regulations made by the Department.

3. A total of 13 formal responses to the consultation were received, however two respondents, the Northern Ireland Court Service and the Northern Ireland Ombudsman offered no comment. Views from the Utility Regulator were also received during the consultation, but as is usual practice, their views are not provided for publication as a formal response to the consultation, and therefore have not been included in this table.

Corresponding Reg, licence condition or consultation paper paragraph	Organisation responding	Summary of comments from respondents	Departmental comment
Powers of Access	Airtricity	Airtricity believe that it is in the interests of public safety for gas licence holders to have the right to enter premises for the purpose of inspection and to be able to do this without risk of obstruction. Availability of this power of entry is also likely to be of additional benefit in creating a disincentive for tampering, in view of the risk of being caught, which is in itself an incentive in the direction of safety. Airtricity believe that extending the powers of right of access will have a positive effect, in terms of promoting public safety and incentivising behaviour that is in the interests of both public safety and reducing the burden of wasteful expenditure on replacement of damaged equipment.	It is intended that the Energy Bill will include provisions to extend the powers of access to premises for both gas suppliers and conveyors. Whilst the Consultation specifically cited entry to premises where meter tampering is suspected, the Department considers that the extended powers of entry should be analogous to some of those already in place in legislation in the Northern Ireland electricity industry (under the Electricity (Northern Ireland) Order 1992) (the Electricity Order) and also in Great Britain. Such powers focus on the purpose that entry is sought for (e.g. reading, removing, disconnecting or inspecting the meter), and provide that such entry may only take place at reasonable times. In addition, it is proposed that the person requiring entry under the new powers will have to provide evidence of his authority where the owner/occupier requests it.
Extension of the Powers of Access 1. Should gas companies be granted extended powers of access?	Airtricity	Airtricity believe that it is in the interests of public safety for gas licence holders to have the right to enter premises for the purpose of inspection and to be able to do this without risk of obstruction. Availability of this power of entry is also likely to be of additional benefit in creating a disincentive for tampering, in view of the risk of being caught, which is in itself an incentive in the direction of safety. Airtricity believe that extending the powers of right of access will have a positive effect, in terms of promoting public safety and incentivising behaviour that is in the interests of both public safety and reducing the burden of wasteful expenditure on replacement of damaged equipment.	It is intended that the Energy Bill will include provisions to extend the powers of access to premises for both gas suppliers and conveyors. Whilst the Consultation specifically cited entry to premises where meter tampering is suspected, the Department considers that the extended powers of entry should be analogous to some of those already in place in legislation in the Northern Ireland electricity industry (under the Electricity (Northern Ireland) Order 1992) (the Electricity Order) and also in Great Britain. Such powers focus on the purpose that entry is sought for (e.g. reading, removing, disconnecting or inspecting the meter), and provide that such entry may only take place at reasonable times. In addition, it is proposed that the person requiring entry under the new powers will have to provide evidence of his authority where the owner/occupier requests it.
Extension of the Powers of Access 2. Should the reason for	Airtricity	There are two reasons why powers of entry should be extended; existing powers	See above.

Corresponding Reg, licence condition or consultation paper paragraph	Organisation responding	Summary of comments from respondents	Departmental comment
<p>access be extended beyond "danger to life and property" to circumstances where there is suspicion of meter tampering?</p>		<p>have been seen to be ineffective in reducing meter tampering and because safety is not the only reason for inspecting a metre. Customers appear to believe that there is a balance of benefit to be had from interfering with their meters. It is therefore self-evident that any such misapprehension ought to be counter balanced in some way and we agree that a lowering of the investigative test hurdle is most likely to achieve this goal. Airtricity would also go further than "suspicion of meter tampering" as ground for entry. The Electricity Order includes powers for an authorised person "to enter premises ... to ascertain the register of any ... metre and remove, inspect or re-install the ... metre? It is important that energy consumption is both accurately recorded and the measured volumes used in settlement of the market, to avoid the cost of inaccuracy impacting charges applied to the generality of customers. Failure to read meters results in deemed consumptions that increase error volumes in the market. In turn these result in misallocation of costs between customers. In limiting entry to "reasonable times", the Electricity Order provides a balance between the Distributors right of entry and customers' right not to be inconvenienced. Airtricity believe that full mirroring of electricity provisions will delivery market efficiency</p>	

Corresponding Reg, licence condition or consultation paper paragraph	Organisation responding	Summary of comments from respondents	Departmental comment
Extension of the Powers of Access 3. Should certain gas equipment belonging to gas companies be exempt from judgement and bankruptcy processes?	Airtricity	<p>gains in addition to the safety and anti-tampering benefits outlined earlier.</p> <p>It is important that customer bankruptcy does not result in removal of equipment that necessary for safety or will be required for the purpose of providing a gas supply to a subsequent occupier of the premises. It would also be unfair to require the generality of customers to continue paying for equipment whose value remains in the regulatory asset base after the physical assets had been removed from the network. Airtricity therefore fully supports the proposal to exempt gas equipment from judgement and bankruptcy processes.</p>	<p>It is intended the proposed provisions will allow that Northern Ireland gas companies be afforded an increased level of protection by exempting equipment belonging to gas companies from judgement and bankruptcy processes affecting gas customers. The proposed new provisions will be analogous to arrangements under the Electricity Order and also certain provisions of the GB gas regime.</p>
Extension of the Powers of Access 3. Should certain gas equipment belonging to gas companies be exempt from judgement and bankruptcy processes?	Insolvency Service, DETI	<p>The Insolvency Service is happy with your proposal to make explicit the exemption of property belonging to gas companies from being taken in bankruptcy proceedings. You may wish to seek advice as to whether exemption should be provided for if a company or partnership which has property belonging to a gas company in its possession is being wound up.</p>	<p>The Department notes your response. In relation to the point about a company or partnership holding property belonging to a gas company in its possession, the Department's understanding is that a liquidator or administrator appointed to a company will only deal with the property belonging to the company in question, and that where there is evidence that the property belongs to a third party, that property will be returned.</p>
Extension to the powers of access	Firmus Energy	<p>There is currently no provision to allow gas companies powers of entry where they suspect meter tampering. This legislation is consistent with NI (electricity) GB and RoI and we therefore</p>	<p>The Department notes your response</p>

Corresponding Reg, licence condition or consultation paper paragraph	Organisation responding	Summary of comments from respondents	Departmental comment
Extension to the powers of access	The Consumer Council	<p>welcome this proposed legislation.</p> <p>The Consumer Council [is] supportive of DETI's proposal to allow licence holders the right to enter premises if they suspect gas meters or fittings are being tampered with. [The Consumer Council] urges 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. The Consumer Council would expect all licence holders to take a responsible and considered approach and have due regard for the sensitivities during the period of investigation. Further, licence holders must not abuse their position and must demonstrate reasonable assurance of meter tampering before gaining access to meters. [The Consumer Council] supports DETI's proposal to make certain gas equipment exempt from judgement and bankruptcy processes.</p>	<p>The proposed new provisions are intended to be analogous to arrangements under the Electricity Order, and also certain provisions of the GB gas regime. In particular, the Department considers that the powers of access regime already in place in the Northern Ireland electricity industry strikes an appropriate balance between the concerns of gas companies and consumers.</p>
Extension of the Powers of Access 1. Should gas companies be granted extended powers of access?	Citizens Advice	<p>Citizens Advice agrees that meter tampering is a serious issue and can have serious safety implications. However Citizens Advice are not convinced that granting extended powers of access is necessarily the best way of tackling this 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 exhausted. Citizens Advice would have</p>	<p>The Department considers that the existing regime for gas companies' powers of access (under Schedule 5 to the Gas (Northern Ireland) Order 1996) (the Gas Order) already contains appropriate checks on exercise of those powers and safeguards to protect individuals from unwarranted intrusion. Such checks will also apply to the proposed new powers of entry. For example, the occupier's</p>

Corresponding Reg, licence condition or consultation paper paragraph	Organisation responding	Summary of comments from respondents	Departmental comment
Extension of the Powers of Access 2. Should the reason for access be extended beyond "danger to life and property" to circumstances where there is suspicion of meter tampering?	Citizens Advice	<p>liked to see more detail in the consultation document about how it is proposed that extended powers of access will work in practice.</p> <p>The circumstances around which licence holders will "suspect" that gas meters or fittings are being tampered with need to be 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.</p>	<p>consent (or a court warrant) will be required except in the case of emergencies. The court has to be satisfied before granting a warrant that admission to premises is reasonably required and that the person seeking admission is authorised.</p> <p>See above</p>
Extension of the Powers of Access 3. Should certain gas equipment belonging to gas companies be exempt from judgement and bankruptcy processes?	Citizens Advice	<p>Citizens Advice fails to see the rational for this. Is this an issue for the existing gas company and if so to what extent? Does the loss of equipment as a result of seizure under the Judgements Enforcement (Northern Ireland) Order 1981 happen enough and incur sufficient cost to the gas company to warrant the introduction of this legislation?</p>	<p>The Department considers that it is important that the bankruptcy of a gas customer does not result in the removal of equipment belonging to a gas company. The equipment may be necessary for safety and/or for the purposes of providing a supply to a future occupier of those premises. The Department's view is that this policy is appropriate and justified.</p>
Extension to the powers of access	Bord Gáis Networks	<p>BGN believe it is appropriate that gas companies be granted extended powers of</p>	<p>Gas suppliers are under a licence obligation to make arrangements with</p>

Corresponding Reg, licence condition or consultation paper paragraph	Organisation responding	Summary of comments from respondents	Departmental comment
Extension of The Powers of Access 1. Should gas companies be granted extended powers of access? 2. Should the reason for access be extended beyond "danger to life and property" to circumstances where there is suspicion of meter tampering?	Phoenix Energy Holdings Limited	<p>access and the consultation paper suggests that the gas order be amended to allow licence holders the right to enter premises. BGN suggest that it may be appropriate to extend this right to conveyance licence holders only, and not to all licence holders as this mirrors the arrangements in RoI and GB. It may be unwieldy to administer this new provision if extended to all conveyance and supply licence holders.</p> <p>PNG owns and operates the gas meters within its Licensed Area and welcomes DETI's proposal to amend gas legislation in Northern Ireland to allow licence holders the right to enter premises if they suspect that gas meters or fittings are being tampered with. Meter tampering is a dangerous activity, posing danger to both life and property. Natural gas consumers guilty of meter tampering are endangering the safety of consumers, members of the public and PNG's network. It is therefore essential that NI's natural gas industry be granted extended powers of access giving companies the right to enter a property if they suspect that a meter has been tampered with. This will bring legislation in line with that in Great Britain (GB), the</p>	<p>conveyors for the provision and installation (by conveyors) of gas meters to customers; in these circumstances, the Department does not believe gas suppliers need corresponding powers of entry, as these activities will in practice be carried out by conveyors. However, suppliers do have a direct and legitimate interest in ascertaining the register of meters, and collecting money/tokens belonging to them. Therefore, the Department intends to introduce provisions that give suppliers express powers of access for those purposes.</p> <p>The Department notes your response. In relation to the comment about obstruction of persons who are authorised to enter premises, this is already a criminal offence under paragraph 8 of Schedule 5 to the Gas (Northern Ireland) Order 1996. The Department intends that such offence will extend to the new powers of access to be proposed in the Energy Bill. The point being made in the Consultation was primarily about creating a criminal offence for intentionally or negligently damaging gas plant. That particular offence already exists under the Electricity Order, but not the Gas Order. The Department intends for the Energy Bill to contain a provision which brings the</p>

Corresponding Reg, licence condition or consultation paper paragraph	Organisation responding	Summary of comments from respondents	Departmental comment
Extension of the Powers of Access 3. Should certain gas equipment belonging to gas companies be exempt from judgement and bankruptcy processes?	Phoenix Energy Holdings Limited	<p>Republic of Ireland (RoI) and indeed in line with legislation for the electricity sector in NI. In line with this PEHL strongly agree with DETI's proposal to introduce legislation in line with that in NI's electricity sector to ensure that anyone who intentionally obstructs a person authorised by a gas licence holder in exercising a power of entry is guilty of a criminal offence.</p> <p>PNG strongly agrees that DETI should introduce legislation which will ensure that gas companies in NI have similar protection against loss of equipment under the Judgements Enforcement (Northern Ireland) Order 1981 and under bankruptcy proceedings as is provided for NI electricity companies and GB gas companies.</p>	<p>Gas Order in line with the Electricity Order.</p> <p>The Department notes your response.</p>
Extension of the Powers of Access	Viridian Power and Energy	<p>[Viridian] agree the powers of access need to be broadened to ensure that licensees can have reasonable access to metering equipment and fittings. However, we also recommend taking this a step further so that licence holders have the ability to secure access in order to disconnect and remove metering equipment for 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 this might be limited to those businesses that persistently flout a supplier's best endeavours to solicit payment. Such powers already exist under Great Britain's (GB) Gas Act 1986</p>	<p>The proposed new provisions are intended to be analogous to arrangements under the Electricity Order, in respect of suspicion of meter tampering and damage to equipment. The proposed provisions will allow a gas conveyor to enter premises for the purposes of disconnection and/or removal of equipment where – a) a connection to the distribution system is no longer required at the relevant premises; or b) a criminal offence of damaging gas equipment has been committed; or c) the conveyor is authorised to do so under the Gas Order or regulations made under it.</p>

Corresponding Reg, licence condition or consultation paper paragraph	Organisation responding	Summary of comments from respondents	Departmental comment
Extension of the Powers of Access	Gaslink	<p>(as amended), and have proven very effective as a deterrent for those that can pay but won't. It has enabled suppliers in GB to keep under control their debt recovery costs, which ultimately benefits all customers, including the fuel poor that inevitably pick up a share of these costs in their tariffs.</p> <p>Gaslink believes that gas companies, in particular the Transmission System Operator and Distribution System Operators, should be granted extended powers of access. Meter tampering or similar activities can present safety risks and also result in loss of revenue to the Gas Industry. The reason for access should be extended beyond "danger to life and property". The grounds for access should also be wider than where there is suspicion of meter tampering as currently proposed by the consultation paper. The concept of "suspicion" can prevent practical difficulties. Instead, a statutory power of access similar to that afforded to electricity undertakings under the Electricity (Northern Ireland) Order 1992 should be given so that authorised persons of gas companies can enter premises "at all reasonable times" to install, inspect, repair and remove a meter. By introducing legislation which states that anyone who intentionally obstructs a person authorised by a gas licence holder shall be guilty of an offence and shall be liable on summary conviction</p>	The Department notes your response. See response to Extension of Powers of Access – Airtricity response

Corresponding Reg, licence condition or consultation paper paragraph	Organisation responding	Summary of comments from respondents	Departmental comment
Gas Meter Testing & Stamping		to a fine is also a good deterrent. Gas equipment belonging to gas companies should be exempt from judgement and bankruptcy processes.	
Meter Stamping & Testing 1. Should the Utility Regulator retain responsibility for meter testing?	Airtricity	Airtricity agree that this will be best implemented as a function that the Utility Regulator can delegate. While it is often stated that the Regulator's primary function is to ensure proper economic regulation of the market, Airtricity strongly believe that this should not be interpreted narrowly, so as to preclude responsibility for ensuring proper market functioning. Airtricity therefore consider that the Utility Regulator should retain responsibility for meter testing and stamping but agree with the proposal that he should be allowed to delegate the service delivery to a competent organisation.	Under Article 22 of the Gas Order, the Utility Regulator has responsibility for appointing meter examiners; however Article 22 currently operates on the basis that meter examiners are members of the Utility Regulator's staff. Thus the Utility Regulator already has the ability to appoint, but it operates on a restricted basis. In the proposed provisions, the Utility Regulator will retain the responsibility but the restriction on appointing examiners from its staff will be removed. This will allow the Utility Regulator to arrange with an appropriate body (such as the National Measurement Office) for the appointment of appropriate meter examiners.
Meter Stamping & Testing 2. Should the Utility Regulator be allowed to delegate the function of gas meter testing and stamping?	Airtricity	Yes.	See above
Meter Stamping & Testing 3. Do you agree that this will fully facilitate the Utility Regulator's responsibility for gas meter testing and stamping?	Airtricity	Yes. The Regulator should have discretion to decide how best to discharge the obligation and we would support the proposal that the National Measurement Office takes on this role.	See above

Corresponding Reg, licence condition or consultation paper paragraph	Organisation responding	Summary of comments from respondents	Departmental comment
Gas Meter (stamping & testing)	Firmus Energy	firmus energy does not have an objection to this proposal.	The Department notes your response
Gas Meter (stamping & testing)	The Consumer Council	The Consumer Council has no objection to DETI's proposal to amend the legislation to give NIAUR delegation powers in respect to testing and stamping gas meters. However, [The Consumer Council] do not believe that the responsibility of meter testing should reside within the gas industry, especially in cases of a meter dispute. [The Consumer Council] would recommend the delegation by NIAUR to an appropriate independent body for verification and testing, and for NIAUR to choose the most cost effective option when considering this appointment.	See response to Gas Meter (stamping & testing) – Airtricity response, as to the policy proposed to be implemented. One of the existing requirements under the Gas Order is that only competent and impartial persons should be appointed as meter examiners (Article 22(9)). The Department's view is that this requirement should not be changed.
Gas Meter Testing and Stamping	Bord Gáis Networks	BGN support the proposal that NIAUR retain the responsibility for metering functions with the power to delegate these functions to an appropriate body.	See response to Gas Meter (stamping & testing) – Airtricity response, as to the policy proposed to be implemented.
Gas Meter (Testing and Stamping) 1. Should the Utility Regulator retain responsibility for meter testing? 2. Should the Utility Regulator be allowed to delegate the function of gas meter testing and stamping?	Phoenix Energy Holdings Limited	PEHL note that all relevant metering functions in GB have been transferred from Ofgem to a Government Department. However as the Government Department subsequently delegated responsibility to the National Measurement Office and as it is likely that a NI Government Department would also delegate responsibility for meter testing should the metering functions be transferred from UReg, it would seem reasonable for UReg to simply retain responsibility for meter testing but be allowed to delegate this responsibility.	See response to Gas Meter (stamping & testing) – Airtricity response, as to the policy proposed to be implemented.

Corresponding Reg, licence condition or consultation paper paragraph	Organisation responding	Summary of comments from respondents	Departmental comment
Gas Meter (Testing and Stamping) 3. Do you agree that this will fully facilitate the Utility Regulator's responsibility for gas meter testing and stamping?	Phoenix Energy Holdings Limited	<p>If the provisions of Article 22 of the Gas Order are met following delegation of functions, we agree that this would fully facilitate UReg's responsibility for gas meter testing and stamping.</p> <p>[Viridian] agree it is eminently sensible for the Utility Regulator to retain overall responsibility for gas meter testing functions, and to also enable the Utility Regulator to delegate these meter testing functions to an appropriate body. As barriers to competition are overcome in the not to distant future, industry operating arrangements to manage testing will need to be more clearly defined and set out. Going forward, we recommend these arrangements are consulted upon by the Utility Regulator.</p>	The Department notes your comments. See response to Gas Meter (stamping & testing) – Airtricity response, as to the policy proposed to be implemented.
Gas Meter (stamping and testing)	Viridian Power and Energy	<p>The Utility Regulator should retain overall responsibility for meters but should be obliged to certify, within a specified timeframe, appropriate bodies best equipped to perform the tasks of approving, testing and stamping gas meters.</p>	See response to Gas Meter (stamping & testing) – Airtricity response
Gas Meter (stamping and testing)	Gaslink	<p>The Utility Regulator should retain overall responsibility for meters but should be obliged to certify, within a specified timeframe, appropriate bodies best equipped to perform the tasks of approving, testing and stamping gas meters.</p>	See response to Gas Meter (stamping & testing) – Airtricity response, as to the policy proposed to be implemented. Beyond the relaxation of the restriction on who may be appointed as a meter examiner, the Department believes that any further amendment to the Gas Order in relation to meter stamping and testing is unnecessary.
Special Administration Regime for Electricity and Gas 1. Should gas and electricity companies be protected by a special administrative regime	Airtricity	<p>The consultation is not clear whether it is envisaged that the proposed administrative regime would apply to distribution companies, suppliers, or both. In the case of suppliers, Airtricity believe that the solution is a form of</p>	The introduction of a special administration regime is intended to ensure the uninterrupted operation of gas and electricity networks essential to security of supply in the event of

Corresponding Reg, licence condition or consultation paper paragraph if they become insolvent?	Organisation responding	Summary of comments from respondents	Departmental comment
Special Administration Regime for Electricity and Gas 2. Are there any other suggestions for achieving protection of customers if company failure were to occur?	Airtricity	<p data-bbox="668 344 1038 1451">supplier of last resort. Airtricity are not convinced that a special form of administration is required for suppliers, providing that a SoLR is always in place and procedures for handing over supply and shipping obligations are properly defined in advance. The situation is different in the case of a pipeline operator, where safety is of primary concern. In such circumstances the case for appointment of a special administrator to ensure continuity of network operation and safety is much more compelling. However, legal provision for [Supplier of Last Resort] SoLR and special administration should not preclude a trade sale, even after formal bankruptcy proceedings have commenced. Airtricity believe the law should recognise practical differences in the roles of suppliers/shipper and pipeline operator when providing for the fallout from market participant failure.</p> <p data-bbox="668 1464 1038 2031">The consultation suggests that the costs of a special administrator can be recouped from the company, but it is not clear how a business that may be fundamentally uneconomic will be able to meet these costs. The law should therefore recognise that some costs may be unrecoverable and provision must therefore be made for a levy (or some other form of revenue raising) across all customers to balance the books. The law does not</p>	<p data-bbox="1050 344 1398 1081">actual or threatened insolvency of certain energy companies. The proposed regime will therefore only apply to companies that hold a gas conveyance licence or a an electricity transmission licence. The proposed regime will be analogous to that which is in place for GB electricity and gas network companies under the Energy Act 2004. The Department is of the view that the Supplier of Last Resort (SoLR) Regulations in place for gas and electricity are an appropriate vehicle to deal with continuity of gas and electricity supplies.</p> <p data-bbox="1050 1464 1398 2031">The new regime is intended to restrict the circumstances under which existing / 'ordinary' insolvency procedures can apply, so that on an insolvency, the interests of the creditors and shareholders of a network company are not put ahead of the wider public interest. The proposed regime will provide that a energy network company in administration will require financial support so that it may continue to carry out</p>

Corresponding Reg, licence condition or consultation paper paragraph	Organisation responding	Summary of comments from respondents	Departmental comment
Special Administration Regime for Electricity and Gas 1. Should gas and electricity companies be protected by a special administration regime if they become insolvent?	Insolvency Service, DETI	<p>currently allow for licence transfers between legal entities and it is therefore not clear that an existing licence could be included in an asset sale. For the sake of a smooth business transition, which is in the best interests of customers, provision should be made for licence transfer in defined circumstances.</p> <p>The Insolvency Service [has] no objection to a regime similar to the special administration regime for water and sewerage companies being put in place for gas and electricity companies.</p> <p>With reference to paragraph 2.19 of your consultation document there is now a presumption under insolvency legislation against appointment of what are termed administrative receivers by those holding floating charges over a company's property as security for loans [Also] I bring to your attention that there is a specific and limited exemption to the general bar on appointment of administrative receivers in the case of gas and electricity companies where a financial backer has what are termed "step-in-rights". The provisions need to be</p>	<p>its functions with minimal disruption. This support may come in several forms, such as direct loans and grants from the government or guarantees from the government for any sums the network owes. This will be recouped back from the relevant gas network company's revenue. In relation to licence transfers, the proposed regime will allow for the making of a transfer scheme to achieve the objectives of the special energy administration.</p> <p>The Department notes your response</p>

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supplemented with a special administration regime such as you are proposing.

Consideration would need to be given to closing off access to all forms of corporate insolvency procedure which might lead to peremptory closure of a gas or electricity company. Corporate insolvency procedures are,

- Company voluntary arrangements
- Administration
- Receivership
- Members and Creditors Voluntary Winding Up
- Winding up by the High Court

My other observations are, (i) that the measures you are proposing do not seem to address the possibility of a major gas company simply deciding to cease operations outside of any insolvency proceedings or perhaps while still solvent. What would happen to its customers in this eventuality?

(ii) what happens if a gas 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

The Department notes your comments. (i) In relation to the issue of an energy network company simply deciding to cease operations, the Department' would expect that the Utility Regulator would assess whether to take enforcement action for breach of licence. (ii) In relation to the issue of preserving continuity of supply if the energy network company ceases to trade internationally, the Department's view is that if the company has its centre of main interests in a foreign jurisdiction then the insolvency law in that jurisdictions will apply. This is normal and cannot be circumvented. (iii) In relation to the point about whether the Government should be given the right to appoint a person to run the energy network company, there is no corresponding alternative or supplemental measure of this nature in the special administration regimes for energy (in GB) or water (in NI). As the Department's proposals are intended to broadly follow those regimes, the Department considers it unnecessary for the Energy Bill to specifically provide for such alternative or supplementary measures.

Special Administration Regime for Electricity and Gas 2. Are there any other suggestions for achieving protection of customers if company failure were to occur?

Insolvency Service, DETI

Corresponding Reg, licence condition or consultation paper paragraph	Organisation responding	Summary of comments from respondents	Departmental comment
Special Administration Regime for Electricity and Gas	NIE plc	<p>abroad?</p> <p>As an alternative or supplementary measure to the suggested special administration regime should the government be given a 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?</p> <p>[NIE] concur with the Department's view that such a regime should be introduced. NIE's principal concern is that the Department's proposals should mirror the corresponding arrangements in Great Britain. This is essential for NIE in its dealings with third parties who will otherwise be concerned that a NI process introduces additional risk for them in their dealings with NIE. [NIE] would recommend that if special administration arrangements are introduced, they should cover all companies owning and / or operating energy network assets in NI, including Northern Ireland Energy Holdings and SONI.</p>	<p>The proposed new provisions are intended to create a special administration regime which is analogous to arrangements in the GB Energy Act 2004. In that regime, and the one being proposed in the Energy Bill, the arrangements apply to any person holding an electricity transmission licence or a gas conveyance licence.</p>
Special Administration Regime for Electricity and Gas	Firmus Energy	<p>firmus energy does not have an objection to this proposal.</p>	<p>The Department notes your response</p>
Special Administration Regime for Electricity and Gas	The Consumer Council	<p>The Consumer Council supports DETI's proposal to implement a special administration regime in the event of a network company becoming insolvent, to ensure continuity of supply is</p>	<p>The Department notes your response, and refers you to the general note at the outset of this document.</p>

Corresponding Reg, licence condition or consultation paper paragraph	Organisation responding	Summary of comments from respondents	Departmental comment
Special Administration Regime for Electricity and Gas 1. Should gas and electricity companies be protected by a special administration regime if they become insolvent?	Citizens Advice	maintained for both electricity and gas consumers. The Consumer Council queries whether the Gas (NI) Order 1996 is the most suitable legislation for this condition, given the proposal covers both gas and electricity. [The Consumer Council] suggests that an amendment to the Energy (Northern Ireland) Order 2003 would be more appropriate.	The Department notes your response
Special Administration Regime for Electricity and Gas 2. Are there any other suggestions for achieving protection of customers if company failure were to occur?	Citizens Advice	In the event of an energy company becoming insolvent CAB welcome the fact that energy supplies would be maintained to consumers.	See response to Special Administration Regime for Electricity and Gas – Airtricity response. As explained above, the proposed arrangements would only apply to persons holding an electricity transmission licence or a gas conveyance licence.
Special Administration Regime for Electricity and Gas	Bord Gáis Networks	BGN support the introduction of a special administration regime for gas. While we believe that the likelihood of such arrangements being called upon in the case of a conveyance licence holders to be minimal, it seems sensible from a risk mitigation perspective that such arrangements should be put in place. We note that this issue was also consulted on in May 2009 in GB, and there may be merit in looking at how it is proposed to	The Department notes your response.

Corresponding Reg, licence condition or consultation paper paragraph	Organisation responding	Summary of comments from respondents	Departmental comment
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Special Administration Regime for Electricity and Gas 1. Should gas and electricity companies be protected by a special administration regime if they become insolvent? 2. Are there any other suggestions for achieving protection of customers if company failure were to occur?

Phoenix Energy Holdings Limited (PEHL)

implement these arrangements in GB.

UReg has recently introduced financial ring-fencing and corporate governance conditions into PNG's licence. These provide further obligations on the company such as ensuring that there is a majority of independent non-executive directors on PNG's board, indebtedness restrictions, requiring PNG to maintain an appropriate investment grade credit rating and submit an annual financial gearing certificate to UReg. Annual reporting arrangements mean that in the unlikely event that PNG was experiencing financial difficulties; UReg would be made aware at the earliest opportunity and would be able to take mitigating action. These conditions were introduced to safeguard the interests of consumers. Other than in respect of the special administration regime in GB, the insolvency regimes in GB and NI are broadly similar. We also note that the tests to determine whether or not a company is insolvent are the same under the insolvency regime and the special administration regime in GB. [PEHL] note that the GB special administration regime does not apply to non-network companies and therefore in the event a similar special administration regime is introduced to NI, we are assuming that the consequences of the insolvency of a gas supplier will remain unchanged.

The Department notes your comments. The Department confirms that the proposed regime would not apply to suppliers. The Supplier of Last Resort arrangements will be unaffected by the new special administration regime.

Corresponding Reg, licence condition or consultation paper paragraph	Organisation responding	Summary of comments from respondents	Departmental comment
(Continued)		<p>There is a single statutory hierarchy of objectives for an administrator of an insolvent company in NI, but in the absence of a special administration regime, there is no express objective which prioritises the security of supply of gas to consumers connected to the network in the event of the network operator's insolvency. Therefore, as DETI points out in the Consultation, the risk is the network operator's administrator may, in taking into account its statutory objectives, simply cease operating the network.</p> <p>Whilst [PEHL] note the objectives of a special administration regime, we are unable to provide any further comment at this stage until [PEHL] have greater understanding of DETI's proposals e.g. in the event of insolvency of a gas supplier in NI will the position under the NI Insolvency Order remain unchanged? [PEHL] note that in GB the responsibility for recovering costs rests solely with NG as the system operator for both gas and electricity and would like to understand what cost recovery mechanisms are being considered by DETI e.g. will the GB approach in keeping the gas and electricity markets separate be followed i.e. NG increases it charges to electricity suppliers where the energy administration in the electricity sector and to gas suppliers where the energy administration in the gas sector? [PEHL] therefore</p>	
<p>Special Administration Regime for Electricity and Gas 1. Should gas and electricity companies be protected by a special administration regime if they become insolvent? 2. Are there any other suggestions for achieving protection of customers if company failure were to occur? (Continued)</p>	<p>Phoenix Energy Holdings Limited (PEHL)</p>	<p>Whilst [PEHL] note the objectives of a special administration regime, we are unable to provide any further comment at this stage until [PEHL] have greater understanding of DETI's proposals e.g. in the event of insolvency of a gas supplier in NI will the position under the NI Insolvency Order remain unchanged? [PEHL] note that in GB the responsibility for recovering costs rests solely with NG as the system operator for both gas and electricity and would like to understand what cost recovery mechanisms are being considered by DETI e.g. will the GB approach in keeping the gas and electricity markets separate be followed i.e. NG increases it charges to electricity suppliers where the energy administration in the electricity sector and to gas suppliers where the energy administration in the gas sector? [PEHL] therefore</p>	See above

Corresponding Reg, licence condition or consultation paper paragraph	Organisation responding	Summary of comments from respondents	Departmental comment
Special Administration Regime	Viridian Power and Energy	<p>reserve the right to comment more specifically on a proposed special administration regime until more detailed information of how such a regime would be introduced and how it would operate in practice is made available.</p> <p>[Viridian] agree it would be a sensible precaution to introduce administration arrangements to better protect the gas and electricity networks in the unlikely event of a network company becoming insolvent. However, unlike in Great Britain, the network companies in Northern Ireland are still vertically integrated with the supply businesses. This presents a particular challenge for Northern Ireland, i.e. how to ensure that it is just the network business in a vertically integrated group of companies that is caught by the new arrangements. Especially given that any supply customers of the sister supply company will be protected under the 'Supplier of Last Resort' arrangements for Northern Ireland. It will be important to still allow these customers to transfer to the new designated company or companies nominated by the Utility Regulator. Our second thought is that for a regulated (price controlled) vertically integrated network and supply business to fail would represent a fairly major failing of regulatory policy. And since it is the Utility Regulator's</p>	<p>The Department notes your comments. The proposed new regime will only apply to companies that are licensed to convey gas or distribute/transmit electricity. If such a company is part of a vertically integrated undertaking, the new regime will not apply to the other companies in the group.</p>

Corresponding Reg, licence condition or consultation paper paragraph	Organisation responding	Summary of comments from respondents	Departmental comment
Special Administration Regime	Gaslink	<p>responsibility to ensure that licence undertakings are able to finance their activities, the risk of failure does seem extremely remote.</p> <p>Gaslink agrees with the proposal that gas and electricity companies be protected by a special administration regime if they become insolvent. This arrangement should provide protection to society against a lengthy interruption of energy supply.</p>	The Department notes your response
Deemed Contracts		<p>The concept of Deemed Contracts is extremely important. It is important that energy is paid for and that there is an explicit legal underpinning of the obligation to pay for energy on the same terms as any previous contract for supply to the premises, whether or not a contract has been signed. Customers are protected by their right to change supplier if they do not like the terms on which they are being supplied. One important consideration is that the counterparty for the deemed contract needs to be more closely defined. [Airtricity] believe that the deemed counterparty 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 an individual/corporate entity is the actual legal owner or occupier of the premises. Without such a safeguard to prevent specious avoidance of liability, a supplier could</p>	<p>The Department notes your response. The proposed provisions will be analogous to the deemed contracts regime in the electricity industry (under the 1992 Electricity Order) and the GB gas industry (under the Gas Act 1986). Consistent with the approach taken in those regimes, the proposed new regime will provide that deemed contracts will incorporate terms and conditions that are published in advance. In relation to the point about joint and several liability, the Department considers that (consistent with the approach taken in GB (gas) and NI (electricity)) only the owner or the occupier should be liable, and that joint and several liability would not be appropriate.</p>
Deemed Contracts 1. Do you agree that the proposed deemed contracts policy will provide both the gas industry and gas consumers in Northern Ireland [with] protection?	Airtricity		

Corresponding Reg, licence condition or consultation paper paragraph	Organisation responding	Summary of comments from respondents	Departmental comment
Deemed Contracts 2. Do you anticipate any concerns from either gas consumers or gas suppliers in relation to the introduction of this policy?	Airtricity	<p>become involved in an expensive and fruitless collection effort with the wrong person. Linkage of liability with (apparent) control would be a perfectly fair requirement as anyone in control of premises must, by definition, be in control of the energy consumption.</p> <p>It is difficult to see why there should be any objection to a policy that provides proper clarification of the relationship between supplier and energy user and is intended to reduce theft.</p>	The Department notes your response
Deemed Contracts	Firmus Energy	firmus energy does not have an objection to this proposal.	The Department notes your response
Deemed Contracts	The Consumer Council	<p>The Consumer Council recognises that the proposal to implement deemed contracts to the Gas (Northern Ireland) Order 1996 will bring it in line with corresponding legislation in electricity. [The Consumer Council] accepts that deemed contracts will provide both the gas consumer and the gas industry additional protection in the scenario where a contract has not been explicitly between the customer and supplier agreed but gas has been used. [The Consumer Council] wishes the following to be taken into consideration:</p> <ul style="list-style-type: none"> <li data-bbox="716 1720 1038 1854">▪ Customers on deemed contracts will be charged the published tariff; <li data-bbox="716 1872 1038 2033">▪ Customers on deemed contracts should not be restricted in a competitive market 	<p>The Department notes your comments would like to highlight that the proposed provisions will place a duty on suppliers to make, and revise when appropriate, a scheme for determining terms and conditions for deemed contracts. The terms and conditions made by suppliers must be published in advance and sent to the Utility Regulator and the Consumer Council for Northern Ireland. Further, the proposed regime will provide the Utility Regulator with the power to make licence modifications for the purposes of the deemed contracts regime. Such licence conditions already exist in electricity supply licences, and can provide additional protection to customers. For example, in electricity, they require the licensee to take all reasonable steps to ensure</p>

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Deemed Contracts (a) Do you agree that the proposed deemed contracts policy will provide both the gas industry and gas consumers in Northern protection?	Citizens Advice	<p>and must be free to shop around;</p> <ul style="list-style-type: none"> ▪ 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; <p>Deemed contracts should be developed in consultation with the Consumer Council.</p> <p>It makes sense to take action that benefits both gas companies and consumers in the event that gas is being burned but no agreement for supply or cost has been signed or approved when premises change owners. CAB would have concerns 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 contact and tariff.</p>	<p>that the terms of deemed contracts are not unduly onerous.</p> <p>The Department notes your response. As stated in the above response to the Consumer Council, provision will be made to allow modifications to be made to supply licences; these can (for example) be used by the Utility Regulator to address issues relating to consumer protection. In terms of customers being speedily moved to an agreed contract, the Department considers that the decision to enter into an actual contract is a matter for discussion between the customer and the relevant supplier of its choice.</p>
Deemed Contracts (b) Do you anticipate any	Citizens Advice	It is important that gas consumers in this situation	See above.

Corresponding Reg, licence condition or consultation paper paragraph	Organisation responding	Summary of comments from respondents	Departmental comment
concerns from either gas consumers of gas suppliers in relation to the introduction of this policy?	Bord Gáis Networks	<p>are speedily moved to an agreed contract and tariff and that they do not suffer on a long term basis at being exposed to a potentially higher tariff. In order to comment on this further we would need detailed information on what is meant by a 'deemed tariff' is.</p> <p>BGN believe that the proposals relating to deemed contracts facilitate supplier of last resort arrangements are pragmatic. The issues relating to introducing deemed contracts may be more of an issue for distribution companies who may have a large number of suppliers active on their networks.</p>	The Department notes your response
Deemed Contracts 1. Do you agree that the proposed deemed contracts policy will provide both the gas industry and gas consumers in Northern Ireland protection? 2. Do you anticipate any concerns from either gas consumers or gas suppliers in relation to in the introduction of this policy?	Phoenix Energy Holdings Limited (PEHL)	<p>PSL welcome the proposal to replicate the deemed contract provisions for the NI electricity industry to the NI natural gas industry. Introduction of appropriate legislation will provide clarification for gas consumers and gas suppliers and [PEHL] do not therefore envisage any concerns arising in relation to the introduction of this policy.</p>	The Department notes your response
Deemed Contracts	Viridian Power and Energy	<p>[Viridian] agree with the proposal to widen the Deemed Contract definition for gas, and that this should embrace all circumstances where a customer is taking a supply other than under a formally agreed contract with a supplier. This is important for a number of reasons: first, it will ensure that customers have a minimum level of protection if they have not, for whatever</p>	<p>The Department notes your response. The Department confirms that the proposed regime will not require terms and conditions of deemed contracts to be the same as the terms and conditions of standard contracts. As noted in the Consumer Council response, the Utility Regulator will have the power to make licence modifications and such</p>

Corresponding Reg, licence condition or consultation paper paragraph	Organisation responding	Summary of comments from respondents	Departmental comment
Deemed Contracts	Gaslink	<p>reason, signed a contract immediately with a supplier; and second, it also ensures that suppliers have a legal right to require payment for any gas that is used, whether or not taken under a formally signed contract. It also avoids suppliers unnecessarily disconnecting supplies between occupancies, saving costs and customer inconvenience. However, 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 contract arrangements.</p> <p>The proposed deemed contracts policy will provide both gas and electricity consumers in Northern Ireland with protection. Arrangements for putting a deemed contract in place where a fixed term contract expires or where an individual moves into a new property, consumes gas and has not agreed contractual terms with a supplier are worth developing. Gas suppliers and other interested parties will have concerns in relation to matters such as:</p> <ul style="list-style-type: none"> ▪ the duration of deemed contracts; ▪ the applicable tariffs under such contracts; ▪ the ability of customers to change supplier. 	<p>modifications may impose additional conditions on what the terms & conditions may be. The proposed approach is consistent with that in place in the deemed contracts regime in the electricity industry.</p> <p>The Department notes your response</p>

Corresponding Reg, licence condition or consultation paper paragraph	Organisation responding	Summary of comments from respondents	Departmental comment
<p>Gas Safety Management 1. Do you agree that this responsibility should be shared by all gas licence holders for the cost of providing a single telephone contact for gas emergencies rather than it being the sole responsibility of Phoenix Natural Gas?</p>	Airtricity	<p>In principle Airtricity support the proposal to share responsibility for the gas emergency telephone line, but there needs to be a legal basis for joint procurement and cost sharing, to ensure that suppliers receive value for money and can be assured of equitable cost sharing arrangements. Airtricity support the proposal that the principle should be established in law, but the detail should be worked out by the industry on the basis of a new licence Condition.</p>	<p>The Department considers that it is appropriate that a single person should continue to have the statutory duty to provide the emergency telephone service, with other gas conveyors tied into the arrangements through statutory provisions and licence conditions. Phoenix Natural Gas Limited was and remains the natural choice for this purpose. The Department considers there are areas of the Gas Safety (Management) Regulations 1997 that require strengthening. In particular, the Department considers that it is necessary for legislative amendments to be made, to ensure that – a. the Department can designate an alternative operator in situations where it is no longer appropriate for the prevailing named operator to be under that statutory duty; and b. other conveyors of gas in a network co-operate with the named operator and must not provide any alternative or competing emergency telephone service for the reporting of gas escapes. Following consideration of options and suggestions, it should be noted that amendments to the Gas Safety (Management) Regulations 1997) will not now be included within the Energy Bill) and will be taken forward via subordinate legislation. Therefore any implementation of the</p>

Corresponding Reg, licence condition or consultation paper paragraph	Organisation responding	Summary of comments from respondents	Departmental comment
			aforementioned policy will be in the form of further regulations made by the Department.
Gas Safety Management 2. Are there any other suggested arrangements?	Airtricity	No.	The Department notes your response
Gas Safety Management	Firmus Energy	firmus energy does not have an objection to this proposal. The Consumer Council supports the existence of a single telephone contact for gas emergencies. We agree the responsibility to provide a single telephone contact for gas emergencies should be shared by all gas licence holders. We accept that this should not solely be the responsibility of Phoenix Natural Gas. We would like to acknowledge that the proposal to reflect this is the legislation is only formalising current industry practice where responsibility is shared.	The Department notes your response
Gas Safety Management	The Consumer Council	BGN acknowledge that the existing arrangements for gas safety management were introduced when only one conveyance licence holder was based in Northern Ireland. BGN suggest that the role of gas safety management should possibly reside with a conveyance licence holder rather than a supplier. We suggest that the arrangements for gas safety management should be reviewed as part of the CAG project implementation.	See response to Gas Safety Management Regulations – Airtricity response
Gas Safety Management	Bord Gáis Networks		The Department notes your response
Gas Safety Management 1. Do you agree that this responsibility should	Phoenix Energy Holdings Limited	PNG welcomes the proposal to share responsibility for providing a single telephone contact for gas emergencies	See response to Gas Safety Management Regulations – Airtricity response. As described in the response,

Corresponding Reg, licence condition or consultation paper paragraph	Organisation responding	Summary of comments from respondents	Departmental comment
<p>be shared by all gas licence holders for the cost of providing a single telephone contact for gas emergencies rather than it being the sole responsibility of Phoenix Natural Gas?</p> <p>2. Are there any other suggested arrangements?</p>	<p>Viridian Power and Energy</p>	<p>with all gas licence holders. PNG is not operational throughout NI and therefore each Operator must have the same legal responsibility for putting in place an emergency telephone contact service for its Licensed Area. At present, the single telephone number is being utilised by all gas licence holders for emergency responses to reported gas escapes and it seems appropriate to retain the single number for NI.</p> <p>[Viridian] cannot understand why it is necessary to move away from the present arrangements, which already ensure the costs are shared via DUoS charges. Placing a duty on all licence holders to agree and contribute to a single gas emergency system merely complicates matters, when the existing approach between Phoenix Natural Gas Ltd and National Grid already works very well. The only difficulty it seems is with respect to Firmus Energy, a vertically integrated supply business and network company, a symptom of the unique franchise arrangements within Northern Ireland. Even so, we note that Firmus Energy has also contracted with Phoenix to provide the service. We therefore suggest the change is unnecessary, and serves to merely complicate matters.</p>	<p>the Department's view is that the statutory duty should continue to reside with a single named operator (Phoenix Natural Gas Limited) but that other conveyors should be under a duty to co-operate with Phoenix, and to not provide a competing service.</p> <p>See response to Gas Safety Management Regulations – Airtricity response. As described in the response, the Department's view is that the statutory duty should continue to reside with a single named operator (Phoenix Natural Gas Limited) but that other conveyors should be under a duty to co-operate with Phoenix, and to not provide a competing service.</p>
<p>Gas Safety Management</p>	<p>Gaslink</p>	<p>Gaslink agrees that the responsibility should be shared by all gas licence holders for the cost of providing a single telephone contact for gas emergencies</p>	<p>See response to Gas Safety Management Regulations – Airtricity response</p>

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rather than it being the sole responsibility of Phoenix Natural Gas. Those contributing to such costs should be given an appropriate say in relation to operational matters and how the service may be improved.

Guaranteed Service Standards

Guaranteed Service Standards 1. Should certain gas companies operating in Northern Ireland be required to set guaranteed standards of performance?

Airtricity

In general Airtricity agree that it is in the interests of both customers and suppliers that required standards of service are properly defined. However it will be important that overall standards reflect the contribution of the different providers (suppliers and transporters) involved in delivery of the service. To that end Airtricity note that the proposed legislation will require the Utility Regulator to establish the standards, against which performance will be monitored, after appropriate consultation. Airtricity supports this proposed approach as it is aligned with legislation for electricity and offers the best chance of delivering appropriate performance requirements. This legislative approach will also facilitate development of standards over time; an outcome that the comparative inflexibility of legislatively defined standards would have been hard pressed to deliver.

The Department notes your response

Guaranteed Service Standards 2. Should gas companies be required to financially compensate customers in Northern Ireland for failing to meet agreed standards?

Airtricity

Airtricity support the enforcement of common service standards for all suppliers, in line with established requirements in the retail electricity market. However it is important that suppliers are not unfairly

The proposed legislation on standards of performance will apply to both licensed gas suppliers and conveyors. It will be broadly analogous to analogous to arrangements in the electricity industry

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penalised for service failures resulting from non-performance by monopoly, third-party service providers. Airtricity expect the regulatory standards of performance to reflect this basic tenet of fairness; responsibility must lie with the entity having control of the process.

under the 1992 Electricity Order and in the gas industry in GB under the Gas Act 1986. Consistent with the approach taken under those pieces of legislation, it is intended that the Utility Regulator should be given the power to make regulations setting individual and overall standards of performance for gas suppliers and conveyers. These Regulations will deal with the detailed aspects such as compensation. The proposed legislation will also place the Utility Regulator under a statutory duty to conduct research and consult on its proposals for prescribing and determining any standards of performance.

It is intended that the proposed provisions will be analogous to arrangements in the electricity industry under the 1992 Electricity Order and in the gas industry in GB under the Gas Act 1986. Therefore, the legislation will require gas suppliers and distributors to provide certain information about performance standards to the Utility Regulator at specific times. It is also proposed that the Utility Regulator will be under a statutory duty to collect and publish information received from gas suppliers and distributors, with a view to ensuring that customers or potential customers have access to relevant information.

Guaranteed Service Standards 3. What other measures could be introduced in place of financial compensation yet still ensuring that optimum service is provided?

Airtricity

Airtricity would expect suppliers to publish a code of practice. Performance in respect of certain key performance indicators could be collated and published by the Authority, in the form of a league table.

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Guaranteed Gas Standards of Performance	Firmus Energy	<p>As per current licence conditions, firmus energy has already agreed a set of performance standards with the Consumer Council. On this basis and on the understanding that any future modification to guaranteed standards of performance would be by mutual consent we are satisfied with the proposed enhancement to these legislative provisions.</p>	<p>The Department notes your response. However, the Department does not propose that modifications to guaranteed standards will be by mutual consent. The regime being proposed will allow the Utility Regulator to prescribe or determine such standards. In The Utility Regulator will however be under a duty to consult people likely to be affected, and to conduct appropriate research.</p>
Guaranteed Gas Standards of Performance	The Consumer Council	<p>The Consumer Council has long called for the inclusion of guaranteed standards of performance (GSS) for gas, to afford consumers the similar levels of standards as electricity consumers. We consider this proposal long overdue. [The Consumer Council] urges all gas companies to implement GSS on a voluntary basis to address the inequality between electricity and gas consumers more quickly than the legislative timescale. [The Consumer Council] looks forward to working with the Northern Ireland Authority for Utility Regulation (NIAUR) in relation to developing the standards of performance. Indeed, we have already considered areas which we believe should be covered by GSS and have previously shared these with both NIAUR and DETI. Where the gas company does not meet the standard [The Consumer Council] believes the company should pay compensation to the customer. Therefore they should be sufficiently</p>	<p>The Department notes your comments. In relation to the point about the regulatory treatment of recovery of compensation paid out to consumers, the Department's view is that this is a matter which falls to the Utility Regulator to address.</p>

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challenging. [The Consumer Council] strongly advocates that the compensation payments awarded to consumers for failed delivery must come from the profits of the gas company. We believe it perverse that any money paid to consumers as a result of a failed service delivery should be recovered from all consumers. This 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. A financial penalty is the main incentive for any company to improve service delivery and do not believe any other measure will achieve this.

Yes. Setting standards of performance and publicising these gives consumers clear information on what to expect from their service provider. It also enables customers to be aware of when they are not receiving an adequate service and when they are entitled to complain about this. We particularly welcome the point made in the consultation document (2.10) that the interests of those who are chronically sick, disabled or of pensionable age are specifically taken into account. Citizens Advice provided advice and information to some of the most socially vulnerable people in Northern Ireland and particularly welcomes any measures to help such vulnerable groups. In Great Britain gas customers have

The Department notes your comments. The proposed new provisions are intended to create a Guaranteed Standards of Performance regime which is analogous to arrangements in the electricity industry under the 1992 Electricity Order and in the gas industry in GB under the Gas Act 1986. Any proposals as to charitable funds are outside the scope of the Consultation.

<p>Guaranteed Gas Standards of Performance (a) Should gas companies in Northern Ireland be required to set guaranteed standards of performance?</p>	<p>Citizens Advice</p>
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access to funds which may help them to pay their gas bills. We would like to see an equivalent hardship fund set up for Northern Ireland. The consultation document mentions (2.12) the fact that the electricity industry has standards of performance which cover a range of issues such as supply restoration, provision of new supply, reconnection after non-payment and responding to letters from customers. We cannot see any rationale for the gas industry being any different and setting standards and publicising these widely to consumers is for the benefit of both consumers and the gas industry itself so everyone is clear what is expected. We would like to see the standards of performance being set in the areas mentioned above but also in additional areas such as debt collection and arrears, which may particularly affect those in more socially disadvantaged or vulnerable groups. 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.

Guaranteed Gas Standards of Performance (b) Should gas companies be required to financially compensate customers in Northern

Citizens Advice

Yes. If a gas company consistently fails to meet the requisite standards and consumers suffer as a result then they should be required to financially compensate those consumers. There

The Department notes your response.

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Ireland for failing to meet agreed standards?		needs to be adequate penalties for failure to meet standards otherwise there may be a lack of commitment on the part of the supplier to achieve of these standards. The application of financial penalties gives weight to the setting of standards and the importance of the practical application of these.	
Guaranteed Gas Standards of Performance (c) What other measures could be introduced in place of financial compensation yet still ensuring that optimum service is provided?	Citizens Advice	Citizens Advice believes that the best way of ensuring that companies adhere to set standards is to put in place some kind of financial penalty.	The Department notes your response.
Guaranteed Gas Standards of Performance	Bord Gáis Networks	BGN understand the desire for the Department to introduce published gas standards of performance as these exist in both RoI and GB. BGN request that any details including proposed compensation levels for failure to meet any such standards be implemented in conjunction with the licence holders. PNG and PSL are committed to delivering a high quality of service to customers and the basis upon which performance is measured are the company's service standards. Both PNG's and PSL's standards of service have been fully endorsed by UReg and the Consumer Council for Northern Ireland. Each year PNG and PSL must review their actual performance against several measured criteria to ensure that they are achieving their overall targets. These figures	See response to Guaranteed Safety Standards – Airtricity response
Guaranteed Gas Standards of Performance 1. Should gas companies operating in Northern Ireland be required to set guaranteed standards of performance?	Phoenix Energy Holdings Limited	PNG and PSL are committed to delivering a high quality of service to customers and the basis upon which performance is measured are the company's service standards. Both PNG's and PSL's standards of service have been fully endorsed by UReg and the Consumer Council for Northern Ireland. Each year PNG and PSL must review their actual performance against several measured criteria to ensure that they are achieving their overall targets. These figures	The Department notes your response

Corresponding Reg, licence condition or consultation paper paragraph	Organisation responding	Summary of comments from respondents	Departmental comment
<p>Guaranteed Gas Standards of Performance 1. Should gas companies operating in Northern Ireland be required to set guaranteed standards of performance? (Continued)</p>	<p>Phoenix Energy Holdings Limited</p>	<p>are made available on both company's websites. For example, PNG's current standards of service are to: 1. Endeavour to answer all calls promptly. 2. Written correspondence will receive a reply within ten working days. 3. All complaints, whether made in person, by telephone, in writing, or otherwise will be recorded and classified. 4. Complainants will receive a full response to their complaint within 10 days, where applicable. 5. Where gas is available, connection will be offered to you within 15 working days of you accepting the quotation for connection. 6. Uncontrolled gas escapes will be attended to within one hour of being notified to PNG. 7. Controlled gas escapes will be attended to within two hours of being notified to PNG. 8. PNG will provide alternative heating and cooking facilities where a gas supply has to be disconnected for safety reasons to a customer who is disabled, chronically sick or of pensionable age and who lives alone, or shares the premises with other persons in the same categories, or with a minor. 9. As a major energy provider PNG has a duty to promote the efficient use of our product. We will do this by training relevant staff, by offering free energy efficiency advice to customers and promoting energy efficiency to customers and potential customers. 10. Following the disconnection</p>	<p>The Department notes your response</p>

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Guaranteed Gas Standards of Performance 2. Should gas companies be required to financially compensate customers in Northern Ireland for failing to meet agreed standards? 3. What other measures could be introduced in place of financial compensation yet still ensuring that optimum service is provided?

Phoenix Energy Holdings Limited

of a domestic customer's gas supply due to a fault in the network, the transportation business will restore, on the basis of reasonable practicality, the domestic customer's supply within 24 hours. The current standards of service for both PNG and PSL assure consumers that both businesses are committed to delivering a high quality of service however the introduction of universal standards of performance across the natural gas industry may provide for more transparency should consumers wish to benchmark the performance of companies.

We note that NI electricity legislation and GB and RoI gas legislation requires companies to compensate consumers for failing to meet agreed standards, however we do not feel that it is appropriate to roll this out to the natural gas industry. We appreciate that UReg will be undertaking further research in this regard and there are a few areas that we believe should be covered within this research: 1. Both PNG and PSL are highly regulated and the current standards of service are already made available on both companies website. 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 UReg to retrospectively allow costs within each companies cost

The Department notes your response. The Department's view is that any proposals as to the treatment of costs incurred in relation to standards of performance will be a matter for the Utility Regulator to address.

Corresponding Reg, licence condition or consultation paper paragraph	Organisation responding	Summary of comments from respondents	Departmental comment
Guaranteed Standards of Performance	Viridian Power and Energy	<p>base. 2. How would the measures to guarantee standards of service be funded e.g. would the cost of putting in place additional systems, processes, procedures and resources be allowed in each company's cost base? And would this include financial compensation?</p> <p>[Viridian] agree that empowering the Utility Regulator to set standards (thus harmonising with electricity principles) is the right way forward. However, regulated standards can actually act 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 resources. For these reasons, we recommend that standards of service are directed at those licence holders that own and operate monopoly gas transportation networks and do so under a regulated price control mechanism (i.e. where there is strong regulatory control). This will also ensure that suppliers, dependent for the delivery of a range of services from network providers, can be assured of uniformity and consistency in the standards they need to support the services provided for their</p>	<p>The Department notes your response The Department is not of the view that considerations as to the competitive differentiation of services in the supply industry is a reason for not having certain uniform standards of performance applying to suppliers. The Department's proposed approach will be consistent with the approach taken in the electricity industry.</p>

Corresponding Reg, licence condition or consultation paper paragraph	Organisation responding	Summary of comments from respondents	Departmental comment
Guaranteed Standards of Performance	Gaslink	<p>customers. We do not therefore agree that applying regulated standards of service on suppliers is helpful, and particularly where the freedom to develop differentiated services competing on price and service level needs to take place in a market that encourages innovation. We therefore recommend that such powers be limited to those parts of the market where competition is unlikely to develop, i.e. network services.</p> <p>Gas companies operating in Northern Ireland should be required to set guaranteed standards of performance. Instead of requiring gas companies to financially compensate customers, 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. These should be followed in the first instance, prior to any dispute being referred to the Utility Regulator pursuant to statute.</p>	<p>The Department notes your response The Department believes that compensation to customers is appropriate; furthermore it is consistent with the regime currently in place in the electricity industry.</p>
Gas Storage	Airtricity	<p>Airtricity support legislative arrangement designed to facilitate development of gas storage in Northern Ireland and to enshrine third party access rights. Third party access is essential to maximise customer benefit as well as being required by</p>	<p>The Department considered that there were three areas that are required to be addressed in relation to gas storage: 1. There is an existing UK (Department of Energy and Climate Change) regime for off-shore gas storage</p>

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Departmental comment

European law. We therefore support the proposals on gas storage contained in the Consultation.

including the NI territorial sea. However, the regulation of third party access to a 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 impact of the Third EU Gas Directive, as well as other considerations (such as the fact there are no such facilities in NI territorial waters in operation or being proposed to be built), this issue will not be dealt with in the Energy Bill but may be dealt with within future legislation. 2. The statutory prohibition on storing gas without a licence (Article 6(1)(b)) of the Gas Order is not sufficiently clear. The proposed Energy Bill will contain a provision to clarify that it is the operator who would be guilty of storing gas (rather than, for example, the user of a storage facility). 3. The Department's analysis indicates that for a very narrow set of circumstances, the decommissioning of certain parts of pipelines in sea waters is unregulated. The Department determined that this issue requires further consideration between Government bodies, and will not be dealt with in the Energy Bill and, if necessary, will be

Corresponding Reg, licence condition or consultation paper paragraph	Organisation responding	Summary of comments from respondents	Departmental comment
			included in considerations for future legislation.
Gas storage 1. In addition to the issues identified above, are there any other legislative provisions which are considered necessary for a gas or energy storage facility?	Insolvency Service, DETI	Insolvency Service recall that the matter of ring-fencing funds set aside for decommissioning storage facilities and associated plant, equipment and pipework in the event of the contractor's insolvency was discussed at the time the Energy Act 2008 was being drawn up.	The Department notes your response.
Gas Storage	Northern Ireland Energy Holdings	Support the proposals on Gas Storage "enabling legislation" and look forward to working with all stakeholders in NI to make this essential infrastructure a reality over the coming years.	The Department notes your response.
Gas Storage	firmus energy	Given that firmus energy is a distribution and supply company, we have no comment to make.	The Department notes your response.
Gas Storage	The Consumer Council	The Consumer Council is aware that legislation is already in place requiring companies to apply for a licence to build or operate natural gas storage facilities. As the proposal outlined in this consultation is to clarify the conditions in relation to third party access to off shore gas, a requirement under EU Directive 2003/55/EC, we accept that this amendment in necessary to the Gas (Northern Ireland) Order 1996.	See response to Gas Storage – Airtricity response
Gas Storage	Bord Gáis Networks	BGN support the introduction of arrangements to facilitate the development of gas storage in Northern Ireland. BGN note that the Department is satisfied that in general the current legislative provisions for gas storage are sufficiently comprehensive. It is	See response to Gas Storage – Airtricity response

Corresponding Reg, licence condition or consultation paper paragraph	Organisation responding	Summary of comments from respondents	Departmental comment
Gas Storage	Viridian Power and Energy	<p>understood that the Department are principally concerned with issues relating to third party access to storage and are requesting respondents to identify any other legislative provisions necessary for gas storage. In this regard we would point to Regulation EC715/2009, part of the recently published "Third Package" of European energy legislation, which contains provisions relating to third party access to gas storage and LNG facilities. BGN suggest that any arrangements developed to facilitate storage in Northern Ireland should take cognisance of these provisions.</p> <p>At this stage, we cannot identify any particular additional legislative aspects that need to be addressed. However, we recommend a watching brief to ensure that competitive access to future storage facilities do not act as a future constraint on competition and/or security of supply considerations.</p> <p>The adequacy of existing legislative provisions to deal with the following issues concerning gas storage facilities should also be considered:</p>	The Department notes your response.
Gas Storage	Gaslink	<ul style="list-style-type: none"> ▪ access and property rights ▪ transport; ▪ control of pollution; ▪ safety and emergency requirements and procedures. 	See response to Gas Storage – Airtricity response

Corresponding Reg, licence condition or consultation paper paragraph Other Comments	Organisation responding	Summary of comments from respondents	Departmental comment
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General Comment

Viridian Power and Energy

[Viridian's] growth aspiration for Northern Ireland has been stymied because of much needed market reforms. Some of these reforms are relatively straight forward, and with direct regulatory action (we have set these out for the Utility Regulator), could mean we re-engage with the gas retail market very quickly. Bolstering market confidence is key, requiring the relentless pursuit of competition principles and objectives for both electricity and gas. This is therefore a very opportune moment to ensure the gas legislative framework ensures the right focus to make sure this has the greatest chance of success for Northern Ireland. [Viridian] therefore welcome many of the proposed enhancements to the Gas Bill; however, this must also be reinforced by a regulatory body that has a mandate to ensure its responsibilities to promote competition are the same, whether this is for electricity or for gas. As it stands today, the Utility Regulator's responsibilities are not well framed for gas, meaning that, it has a duty to promote effective competition in supply for electricity but not for gas. This imbalance needs to be urgently corrected in order to ensure there can be no undue discrimination between electricity and gas competition market principles. We therefore accordingly urge the Department to also revise the

The Department concurs that the issue of competition is important however the issues raised in your response are outside the scope of the Consultation. The Department considers that this issue would be better dealt with under a separate consultation concerning future legislation. Under this arrangement, the Department would be able to consider the competition issue more fully and in sufficient detail as well as gaining comprehensive views from industry, consumer bodies such as the Consumer Council, and the Utility Regulator.

Corresponding Reg, licence condition or consultation paper paragraph	Organisation responding	Summary of comments from respondents	Departmental comment
		Energy (Northern Ireland) Order 2003.	

12 March 2010 - Briefing paper re Renewable Heat Incentive (RHI)

From: David McCune
Departmental Assembly Liaison Officer

Date: 12 March 2010

To: Jim McManus
ETI Committee Clerk

Issue: Renewable Heat Incentive

1. The ETI Committee requested information regarding why the Renewable Heat Incentive is not available in Northern Ireland.
2. Grateful if you would circulate the attached information to the Committee members.

David McCune

Briefing Note to the ETI Committee - Renewable Heat Incentive

GB Position

The Department of Energy and Climate Change (DECC) has proposed to incentivise renewable heating technologies through a Renewable Heat Incentive (RHI). The legislation for this incentive is planned to be in place by April 2011, however, DECC has indicated that appropriate installations made after 15 July 2009 will also be eligible for the payment.

DECC has statutory powers to implement a RHI via last minute amendments to what is now the Energy Act 2008 (in advance of the Renewable Energy Directive coming into force). The RHI will apply across England, Scotland and Wales and will be open to individuals, community groups and businesses. The incentive is intended to increase the uptake of technologies such as air source and ground source heat pumps, biomass boilers, solar thermal etc. The incentive will mean that those installing eligible renewable heating technologies will be entitled to a payment which varies depending on the size and type of the technology.

The RHI will reward those who install eligible renewable heat technologies through a payment to be made annually for small micro-generation installations or quarterly for larger technologies. Generally, in the domestic sector the annual payments will be agreed in advance and will depend on the size and type of household. For large industrial sized installations the quarterly payment will be dependent on the actual heat used

The DECC consultation which was published on 1st February 2010, and closes on 26th April 2010, is available at the following link;

<http://www.decc.gov.uk/en/content/cms/consultations/rhi/rhi.aspx>

Details of how the scheme will be funded will be included the Chancellor's Budget in April 2010.

DETI Position

The incentive is not available in Northern Ireland because at that time (September 2008) the timing was too tight to get a Legislative Consent Motion through the Assembly for extension of powers for an RHI to Northern Ireland and Energy Division was unable to advise categorically that an RHI was the best course of action for NI, because of the lack of any evidence base or detail on the DECC proposals and the significant difference in the NI and GB heat markets.

However grant assistance for heat generating microgeneration technologies remains available across the UK through the Low Carbon Building Programme (LCBP) until April 2011, subject to the availability of funding.

In December 2009, DETI appointed AECOM Ltd and Pöyry Energy Consulting to undertake an independent assessment to identify and quantify the current scale, future sustainable growth potential and optimum size and scale of the renewable heat sector in Northern Ireland.

Specifically this work will;

- establish up to date and accurate statistics on the current heat and renewable heat usage in NI;
- produce a base heat map using GIS;
- benchmark the potential for renewable heat in NI against renewable heat markets in GB, RoI and two other European regions;
- present options on how the renewable heat market in NI could be encouraged;
- assess the need for an interim measure in NI in light of the introduction of the Renewable Heat Incentive in GB; and
- make projections as to an evidence based target for renewable heat to 2020, setting out clearly the potential impact of any target on other existing energy markets.

This work, which will complete by April 2010, will ensure that up to date information on heat and renewable heat is gathered, that all possible options for incentivising the NI market place are considered and that future policy decisions are based on sound evidence. The ETI Committee will be provided with a written briefing once this work has completed.

If this work indicates that a RHI would be the most effective way of developing renewable heat in NI then a legislative timetable will need to be developed. While the introduction of a RHI is planned for April 2011 in GB, it is unlikely similar legislation will be in place in NI before 2012 due to the necessary consultation process that would be required.

One key aspect of the current study therefore will be to include considerations as to options for encouraging the market in the short term so Northern Ireland is not unduly disadvantaged.

DETI will be liaising closely with DECC's Renewable Heat Team over the next number of months as they collate and assess responses to their ongoing consultation and finalise the proposals relating to the design and implementation of the RHI.

14 April 2010 - Briefing Paper re Energy Bill

Mr Jim McManus
Clerk
Enterprise, Trade and Investment Committee
Northern Ireland Assembly
Parliament Buildings
Stormont
BELFAST
BT4 3XX 14 April 2010

Dear Jim

Energy Bill

As you are aware, Departmental officials provided oral briefing on the details of the Energy Bill to the ETI Committee on Monday 29 March 2010. At this meeting, it was agreed that the Department would provide more information to the Committee members on two issues raised during the course of the meeting. The issues were as follows -

- Information from natural gas suppliers with regard to the scale of meter tampering; and
- Clarification on the applicability of the previous Gas Legislation

Information from natural gas suppliers with regard to meter tampering

The Department has consulted with firmus energy and Phoenix Supply Limited in relation to number of customers who have been disconnected as a result of meter tampering.

firmus energy

firmus energy has around 6,500 customers in its licence area and has advised that it has had five instances of meter tampering within its licensed area outside Greater Belfast since 2008. firmus has explained that if the company can confirm that a gas meter has been tampered with, the meter will be removed for safety reasons and to protect the health and wellbeing of neighbours and surrounding properties. firmus energy has further advised that once a customer who has been found responsible of tampering with their gas meter has paid for the damaged meter and reconnection costs, firmus will then arrange for their contractor to fit a new gas meter as soon as reasonably practicable, and reconnect the gas supply.

Phoenix Supply Ltd

Phoenix Supply Ltd, which has approximately 130,000 customers in their Belfast licensed area, has advised that it does not record separately the number of disconnections carried out solely as a result of gas meter tampering. The numbers provided below are the total number of Phoenix disconnections carried out by the company and include:

- disconnections arising as a result of vacant properties where there is no gas burn;
- disconnections requested by customers;
- disconnections required to ensure safety to life and/or property;
- disconnections arising as a result of no gas consumption recorded through the meter; and
- disconnections as a result of failure by the customer to enter into an appropriate repayment arrangement to repay outstanding debt.

The total number of disconnections carried out by Phoenix in each of the last 5 years is as follows which is also expressed as a % of the total customer base.

Year	No. Disconnections	% of Connected Customers
2005	408	0.5%
2006	363	0.4%
2007	184	0.2%
2008	212	0.2%
2009	455	0.4%

Phoenix has advised that if, upon inspecting a meter, it suspects that the meter has been tampered with, the meter will be removed for diagnostic testing and, unless there has been a previous history of meter tampering, replaced with a Quantum meter (a prepayment meter with a debt recovery function) to ensure that the customer's gas supply is not interrupted.

Phoenix has further noted that if a customer is found responsible of tampering with the gas meter, that customer will be required to pay the costs incurred by Phoenix associated with the damage to its asset, either in full or agree to a suitable payment arrangement. As a last resort, if the customer persistently fails to meet the payment arrangements the terms of which they have agreed, Phoenix will disconnect the customer until the payment arrangements are resolved.

Clarification on the applicability of the previous Gas Legislation

All the gas legislation dating back to the nineteenth century has now been repealed primarily by the Gas (Northern Ireland) Order 1977. The 1977 Gas Order was created for the towns' gas system that was in place at that time.

Subsequent to the 1977 Gas Order, the Gas (Northern Ireland) Order 1985 was implemented. The 1985 Gas Order was created to facilitate the run-down and closure of towns' gas undertakings.

Both the 1977 and the 1985 Gas Orders were repealed by Gas (Northern Ireland) Order 1996 which is still in effect. The 1996 Order was created when natural gas was initially brought to Northern Ireland. The intention of the current proposed Energy Bill is to update the 1996 Gas Order and the Electricity (Northern Ireland) Order 1992 in respect of a number of key provisions as discussed with the Committee.

For your convenience, a table detailing the repealed legislation is attached to the annex of this letter.

If you require any further information please contact either me or Fred Frazer on 028 90529272 or e-mail fred.frazer@detini.gov.uk

Yours sincerely

Jenny Pyper

Energy Division
Department of Enterprise, Trade and Investment

Annex

Gas Legislation repealed by the Gas (Northern Ireland) Order 1977

Title of Legislation	Extent of Repeal
The Gasworks Clauses Act 1847	The whole Act
The Sale of Gas Act 1859	The whole Act
The Sale of Gas Act 1860	The whole Act
The Gasworks Clauses Act 1871	The whole Act
The Gas Regulation Act 1920	The whole Act
The Electricity and Gas (Expenses) Act (Northern Ireland) 1923	The whole Act
The Gas Undertakings Act (Northern Ireland) 1939	The whole Act
The Gas Act (Northern Ireland) 1971	The whole Act
The Electricity and Gas Undertakings (Financial Provisions) (Northern Ireland) Order 1977	In Article 4 the words "a gas undertaking or", "gas or", "the gas undertaking or, as the case may be", "gas or, as the case may be"

Gas Legislation repealed by the Gas (Northern Ireland) Order 1996

Title of Legislation	Extent of Repeal
The Gas (Northern Ireland) Order 1977	The whole Order
The Gas (Amendment) (Northern Ireland) Order 1984	The whole Order
The Gas (Northern Ireland) Order 1985	The whole Order

20 August 2010 Briefing Paper re inclusion of renewable heat incentive into Energy Bill



Eti Committee Query for Inclusion of Renewable Heat Incentive Provisions into Energy Bill

On 17 June 2010, the ETI Committee discussed a briefing paper, provided by DETI, on EU Energy Policy and, as a result, members agreed to explore with the Department the possibility of

introducing a renewable heat incentive (RHI) in Northern Ireland through amendments to the Energy Bill.

Following the Department of Energy and Climate Change (DECC) decision to incentivise renewable heat in GB, DETI has been working on a study to determine the most appropriate method of developing and supporting the local renewable heat market. This study is now complete and indications are that a targeted incentive for domestic and commercial customers, similar to the GB model, could be appropriate. However further economic analysis will be required.

Inclusion of provisions for RHI in primary legislation would bring Northern Ireland into line with the rest of the UK following the introduction of an amendment incorporating RHI into the 2008 Energy Bill in GB. Further secondary legislation will also be needed in both GB and NI to implement a renewable heat incentive.

The Department has investigated the possibility of introducing RHI through amendments to the Energy Bill with the Office of Legislative Counsel (OLC). As the Bill is principally about the natural gas industry, with a very limited application to the electricity sector, a provision for renewable energy is deemed to be outside the scope of this Bill.

Furthermore, even if deemed within the scope of the current Bill, it should be noted that there is a statutory duty on the Department to consult upon new policy issues. The inclusion of a new and significant provision, such as RHI, in the Energy Bill would require a policy consultation exercise to be undertaken. In addition, the equivalent GB legislation on the subject of RHI is substantial and drafting the required provisions for NI legislation would require additional time and resources. Therefore, any attempt to include provisions on RHI in the Energy Bill could considerably delay the progress of the Bill and could potentially mean that the Bill, if not enacted within this Assembly, would fall.

It will therefore be necessary for a separate piece of primary legislation to be introduced in order to provide enabling powers for a renewable heat incentive, along with other miscellaneous provisions, which could go through the Assembly legislative process next year.

I would be grateful if you would bring this matter to the attention of Enterprise, Trade and Investment Committee.

Yours sincerely

Fiona Hepper

Head of Energy Division
20 August 2010

9 September 2010 - DETI's response to Committee's queries on Energy Bill

Restricted - Policy

Mr Jim McManus
Departmental Committee Clerk
Enterprise, Trade and Investment Committee
Northern Ireland Assembly

Parliament Buildings
Stormont
BELFAST
BT4 3SW 9 September 2010

Dear Jim

Energy (NI) Bill

Thank you for copying to the Department comments submitted by stakeholders in response to the ETI Committee's call for evidence in respect of the draft Energy Bill.

The Department has carefully considered all of the comments submitted and, drawing on legal advice, has compiled our response to each comment as listed on the attached Committee Stage Summary table. We are awaiting advice from the OLC on two issues.

I would be happy to discuss the Department's response in further detail as necessary with Committee Members at their forthcoming meeting with officials on 9 September.

In the meantime, if you require any further information please do not hesitate to contact me (tel: 028 90529272; e-mail fred.frazer@detini.gov.uk) or Irene McAllister (tel: 028 9052 9398; e-mail: Irene.mcallister@detini.gov.uk)

Yours sincerely

Fred Frazer

Energy Markets Branch

24 September 2010 - Letter from Committee to DETI



Mr David McCune
Departmental Assembly Liaison Officer
Room 139
Netherleigh
Massey Avenue
Belfast
BT4 2JP

24th September 2010

Dear David

Committee for Enterprise, Trade & Investment Consideration of the Energy Bill

At yesterday's meeting of the Committee for Enterprise, Trade & Investment, members received oral briefings from representatives from Consumer Council and the Utility Regulator. A number of issues arose in the course of these briefings on which the Committee agreed to seek clarification and views of the Department.

In relation to Clause 10 (1) it was suggested that the term "by culpable negligence" may be too wide and that it may be sufficient to include the term "intentionally damages or allows to be damaged" under this provision. Members would like to receive clarification from the Department on what exactly is meant by the term "culpable negligence".

In relation to Clause 10 (4) it was felt that it should read, "A meter removed under subsection (3) shall be kept safely by the gas conveyor until the Authority authorises its destruction, disposal or **repair**." The Committee would like to receive the views of the Department on this.

In relation to Clause 14, in its response to a query from the Consumer Council, the Department stated that, "If occupier consent is not obtained, then the gas company must be able to demonstrate "reasonable suspicion". Members noted that the terms "reasonable suspicion" and "meter tampering" are not mentioned in either the Energy Bill or the Gas (NI) Order 1996. It was confirmed by the Utility Regulator's representative that, under Schedule 5 paragraph 2 of the Gas Order it states that powers of entry may be exercised where "the relevant authority has reasonable cause to suspect that there may be a danger to life or property", but not in the case of reasonable suspicion of meter tampering. The Committee agreed to ask the Department if it considered it appropriate to include these terms in Clause 14 of the Bill.

Yours Sincerely,

Jim McManus
Clerk
Committee for Enterprise, Trade and Investment

Committee for Enterprise, Trade and Investment
Room 424, Parliament Buildings
Stormont, Belfast
BT4 3XX

Telephone: 028 90 521230
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6 October and 25 October 2010 DETI's response to Committee's queries on Energy Bill

Restricted – Policy



Department of
**Enterprise, Trade
and Investment**
www.deti.gov.uk

Mr Jim McManus

Departmental Committee Clerk
Enterprise, Trade and Investment Committee
Northern Ireland Assembly
Parliament Buildings

BELFAST

BT4 3SW 6th October 2010

Dear Jim

Energy Bill

On 23 September 2010, the ETI Committee received oral evidence from both the Consumer Council and the Utility Regulator in respect of the Energy Bill. The Committee subsequently agreed to seek the views of the Department on the following issues:

- Clause 10(1) - It was suggested that this might be redrafted to exclude the term "by culpable negligence". Committee Members have also sought clarification on what is meant by this term;
- Clause 10(4) – It was suggested that this might be redrafted to read "A meter removed under subsection (3) shall be kept safely by the gas conveyor until the Authority authorises its destruction, disposal or repair."
- Clause 14 – The Department has been asked to consider the appropriateness of including the terms "reasonable suspicion" and "meter tampering" in Clause 14 of the Bill.

Clause 10(1) – Culpable Negligence

Clause 10(1) was drafted to reflect equivalent provisions in paragraph 6(1) in Schedule 6 of the Electricity (Northern Ireland) Order 1992, which states "A person who intentionally or by culpable negligence damages or allows to be damaged—".

The Department has liaised with the Office of Legislative Counsel (OLC) regarding this matter who has advised that "culpable negligence" denotes a high degree of negligence which merits criminal sanctions and is more commonly referred to as "gross negligence". OLC has advised that the clause could be amended to be restricted to intentional damage only. However, that would mean that the gas provisions would be out of line with electricity legislation. OLC has also noted that water legislation goes even further and penalises merely negligent damage to water fittings. The Department would therefore consider it desirable to retain Clause 10(1) as originally drafted to keep the gas provisions in line with equivalent Northern Ireland electricity legislation.

Clause 10(4) – Repair of Damaged Meters

Clause 10(4) was drafted to reflect equivalent provisions in paragraph 6(4) in Schedule 6 of the Electricity (Northern Ireland) Order 1992. However, the Department has consulted with the natural gas industry regarding this amendment and they have advised that they would be content with the revised wording and accept that, in certain circumstances, it would be feasible for meters to be repaired rather than disposed of or destroyed. The only reason that gas companies would not repair a meter would be where the cost of repair (including delivery costs) would exceed the cost of a new replacement meter. OLC has agreed that this minor amendment could be made to the Bill without adversely impacting on any other aspect of the proposed legislation. The proposed amendment to Clause 10 is set out in red text at Annex 1.

Clause 14 – "Meter Tampering" and "Reasonable Suspicion"

The Department has considered the Committee's suggestion in relation to explicitly mentioning "meter tampering" in Clause 14 of the Bill (for ease of reference, a copy of Clause 14 is attached at Annex 2).

Clause 14(1) of the Energy Bill provides a general right to enter premises to inspect the gas system or fittings. The Department has sought legal advice as to whether it is necessary for this Clause to specify the exact purpose of such an inspection, e.g. to check for meter tampering. Advice received has suggested that this is not necessary because the current wording gives rise to a power of entry to carry out inspections which is not limited by reference to any particular purpose for the inspection.

Clause 14(2) of the Bill confers a right of entry where the offence of damage to gas plant has been committed as defined in Clause 10.

On this basis, the Department feels that Clause 14 has adequate provisions to cover meter tampering and does not require a specific reference to be added.

In light of the Committee's query, however, we have re-examined Clause 10 to ensure that its provisions for damage to gas plant fully encompass meter tampering. Our conclusion is that it would be desirable to amend Clause 10(1) to specifically refer to tampering with gas meters in order to avoid any doubt about whether tampering/interfering with a meter necessarily amounts to damaging it. There are already equivalent provisions specifically making it an offence to tamper with meters under the Electricity (Northern Ireland) Order 1992, and under the Gas Act 1986 and the Electricity Act 1989 in GB. OLC has agreed that this amendment can be made without negatively impacting on any other part of the proposed Energy Bill. The proposed amendment to Clause 10 is set out in red text at Annex 1.

The Department has also considered the Committee's suggestion as to whether it would be appropriate to include the term "reasonable suspicion" in Clause 14 of the Bill in relation to the circumstances whereby gas companies might utilise powers of entry in relation to suspected meter tampering.

Clause 14(8) makes reference to paragraphs 5 to 8 of Schedule 5 to the Gas (Northern Ireland) Order 1996 (attached at Annex 3) which establishes the procedures to be followed when entry to premises is required. These specify that (apart from emergency situations where there is danger to life or property) a power of entry shall not be exercisable except by consent from the occupier, or under the authority of a warrant whereby a justice of the peace is satisfied that admission to the premises is "reasonably required". OLC has confirmed that these paragraphs in Schedule 5 are drafted in a sufficiently general way to apply to the Energy Bill and that it is not therefore necessary to incorporate the term "reasonable suspicion" in Clause 14. The Department therefore feels that the current legislative provisions in the Energy Bill and Gas (Northern Ireland) Order 1996 are sufficient to deal with reasonable suspicion with regards to meter tampering.

I would be happy to discuss the Department's response in further detail with Committee Members, if considered necessary. In due course, I can provide an overview of all suggested amendments to the Energy Bill, which would be moved at Consideration Stage, before the Committee finalise their scrutiny of the draft Bill.

In the meantime, if you require any further information please do not hesitate to contact me (tel: 028 90529272; e-mail fred.frazer@detini.gov.uk) or Irene McAllister (tel: 028 90529398; e-mail: irene.mcallister@detini.gov.uk)

Yours sincerely

Fred Frazer

DETI Energy Markets Branch

Annex 1

CLAUSE 10 (Proposed amendments shown in red)

10.(1) A person who intentionally or by culpable negligence –

- (a) damages or allows to be damaged any gas plant provided by a gas conveyor;
- (b) alters the index of any meter used for measuring the quantity of gas conveyed or supplied by a gas conveyor or a gas supplier; or
- (c) prevents any such meter from duly registering the quantity of gas conveyed or supplied,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Where an offence has been committed under subsection (1)(a) 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.

(3) 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.

(4) A meter removed under subsection (3) shall be kept safely by the gas conveyor until the Authority authorises its destruction or disposal or repair.

Annex 2

CLAUSE 14 (Powers of entry)

14.—(1) Any person authorised by a gas conveyor may at all reasonable times enter any premises to which gas is conveyed by that gas conveyor for the purpose of—

- (a) inspecting the gas system or any gas fittings on the premises;
- (b) removing, inspecting or re-installing any gas meter or installing any substitute meter.

(2) Where a gas conveyor is authorised by section 10—

- (a) to disconnect any premises; or
- (b) to remove a gas meter,

any person authorised by the gas conveyor may at all reasonable times enter the premises for the purpose of disconnecting the premises or removing the meter.

(3) Where—

(a) a gas conveyor is authorised by any provision of the Gas Order or of regulations made under it to disconnect any premises;

(b) a person occupying premises which are connected to a distribution system of the gas conveyor ceases to require a connection; or

(c) a person entering into occupation of any premises connected to a distribution system of a gas conveyor does not require such a connection,

any person authorised by the gas conveyor may at all reasonable times enter the premises for the purpose of disconnecting the premises or removing any gas plant provided by the gas conveyor.

(4) Any person authorised by a gas conveyor may at all reasonable times enter any premises for the purpose of placing any new gas plant in the place of or in addition to any existing plant which has already been lawfully placed.

(5) Any person authorised by a gas supplier may at all reasonable times enter any premises to which gas is conveyed by a gas conveyor for the purpose of—

(a) ascertaining the register of any gas meter; and

(b) in the case of a pre-payment meter, removing any money or tokens belonging to the supplier.

(6) A power of entry may not be exercised—

(a) under subsection (1)(b) or (3) unless at least two working days' notice has been given to the occupier (or to the owner of the premises if they are unoccupied);

(b) under subsection (4) unless at least 5 working days' notice has been given to the occupier (or to the owner of the premises if they are unoccupied).

(7) A person exercising a power of entry under this section must, on request by or on behalf of the owner or occupier of the premises, produce evidence of that person's authority.

(8) Paragraphs 5 to 8 of Schedule 5 to the Gas Order apply in relation to a power of entry conferred by this section as they apply in relation to a power of entry conferred by that Schedule.

(9) In this section "gas system" and "gas fittings" have the same meanings as in Schedule 5 to the Gas Order.

Annex 3

GAS (NORTHERN IRELAND) ORDER 1996 (Paragraphs 5-8 of Schedule 5)

Exercise of powers of entry

5. —

(1) A power of entry conferred by or under this Schedule shall not be exercisable except—

(a) with consent given by or on behalf of the occupier of the premises; or

(b) under the authority of a warrant granted under paragraph 6;

so, however, that this sub-paragraph shall not apply where entry is sought in the case of emergency.

(2) Any person exercising powers of entry conferred by or under this Schedule may be accompanied by such other persons as may be necessary or expedient for the purpose for which the entry is made, or for the purposes of paragraph 7.

Warrant to authorise entry

6. —

(1) Where a justice of the peace is satisfied by complaint on oath—

(a) that admission to premises is reasonably required for the purpose specified in the complaint; and

(b) that a duly authorised person would, apart from paragraph 5, be entitled for that purpose to exercise in respect of the premises a power of entry conferred by or under this Schedule; and

(c) that—

(i) the consent of the occupier has been refused or seeking that consent would defeat the object of the entry; or

(ii) the premises are unoccupied;

he may issue a warrant under his hand authorising that duly authorised person to enter the premises.

(2) A warrant granted under this paragraph shall continue in force until—

(a) the time when the purpose for which the entry is required is satisfied; or

(b) the end of the period of 28 days from the day on which the warrant is granted,

whichever is the earlier.

Premises to be left secure and damage to be made good

7. Where, under any powers conferred by or under this Schedule, entry is made on any premises by a duly authorised person—

(a) he shall ensure that the premises are left no less secure by reason of the entry, and

(b) the relevant authority or the relevant licence holder (as the case may be) shall make good or pay compensation for any damage to property caused by that person, or by any person accompanying him in entering the premises, in taking any action in the premises authorised by or under this Schedule or in making the premises secure.

Penalty for obstruction

8. If any person intentionally obstructs any person exercising powers of entry conferred by or under this Schedule, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

25 October 2010 - DETI Response re Energy Bill Clause queries

Mr Jim McManus
Departmental Committee Clerk
Enterprise, Trade and Investment Committee
Northern Ireland Assembly
Parliament Buildings
Belfast
BT4 3SW

25 October 2010

Dear Jim

Energy Bill

On 14 October 2010, the ETI Committee met with Departmental representatives to discuss the legislative provisions of the Energy Bill. The Committee subsequently agreed to seek clarification from the Department on the following issues:

- Clause 10(1) - It was suggested that this might be redrafted to exclude the term "culpable negligence" and whether the Department still feels that wording is correct and appropriate;
- Clause 14 – The Department has been asked to consider and examine existing GB legislation in respect of the issue of a time lag that would exist if a gas company was unable to enter a home because the owner would not provide access, and so would need to obtain a warrant. The concern being that the time lag would impose a danger to other homes and provide the suspect with enough time to "fix" the tampered meter.
- Clause 35: The Department has been asked to notify the Committee of the proposed amendment to the wording.

Clause 10(1) – Culpable Negligence

Clause 10(1) was drafted to reflect equivalent provisions in paragraph 6(1) in Schedule 6 of the Electricity (Northern Ireland) Order 1992, which states "A person who intentionally or by culpable negligence damages or allows to be damaged—".

As previously stated, the Office of Legislative Counsel (OLC) has advised that "culpable negligence" denotes a high degree of negligence which merits criminal sanctions and is more commonly referred to as "gross negligence". OLC also advised that the clause could be amended to be restricted to intentional damage only. However, that would mean that the gas provisions would be out of line with electricity legislation. OLC has also noted that water legislation goes even further and penalises merely negligent damage to water fittings. The Department would therefore propose to retain Clause 10(1) (attached at Annex 1 for ease of reference) as originally drafted to keep the gas provisions in the Bill in accordance with equivalent Northern Ireland electricity legislation.

Clause 14 – Powers of Entry

Further to the Committee's concerns expressed at the 14 October meeting with officials, the Department has considered and examined existing GB legislation in respect of the issue of the time lag that would exist if a gas company was unable to enter a property because the owner would not provide access, and the company would need to obtain a warrant.

Paragraphs 5 to 8 of Schedule 5 to the Gas (Northern Ireland) Order 1996 establish the procedures to be followed when entry to premises is required. These specify that (apart from emergency situations where there is danger to life or property) a power of entry shall not be exercisable except by consent from the occupier, or under the authority of a warrant whereby a Justice of the Peace (JP) is satisfied that admission to the premises is reasonably required.

In GB legislation, paragraphs 23 to 27 of Schedule 2B to the Gas Act 1986 deal with powers of entry. In particular, paragraph 28 refers to the Rights of Entry (Gas and Electricity Boards) Act 1954 as the applicable legislation to deal with powers of entry for gas and electricity companies. In Section 2(2)(d) of the Rights of Entry Act 1954, it states that a JP must be satisfied to give a warrant to a gas company if the latter put forward the case that an application for admission to the occupier of the premises would defeat the object of the entry.

Upon further examination, Departmental officials believe that there are equivalent provisions in paragraph 6(1)(c)(i) of Schedule 5 to the Gas (NI) Order 1996 which states when a gas company applies for a warrant to enter premises, the JP must be satisfied that either "the consent of the occupier has been refused or seeking that consent would defeat the object of the entry".

Departmental officials have liaised with OLC, who has confirmed that this existing provision provides that a gas company does not need to inform the occupier if to do so would defeat the purpose of the entry. In such a case the gas company can seek to obtain the warrant under clause 14(1)(a) and enter the premises without any advance notice to the occupier. The argument would be that by providing the occupier with advance notice, this would actually allow the occupier sufficient time to reinstate damaged equipment, eg. such as fix a tampered gas meter, and potentially increase safety concerns. There are broadly similar provisions in paragraph 11 of Schedule 6 to the Electricity (Northern Ireland) Order 1992. The relevant text in Paragraphs 5 to 8 of Schedule 5 to the Gas (NI) Order 1996 is highlighted in red text at Annex 2.

Clause 35 – Proposed Amendment to Interpretation Clause

I would also wish to draw the Committee's attention to a minor amendment to the Energy Bill which the Department proposes to make for reasons of accuracy. In Clause 35 (1), the Department intends to change the reference to the "Northern Ireland Authority for Energy Regulation", the Regulator's former name, to the "Northern Ireland Authority for Utility Regulation". OLC is content with this proposed change, and while this issue was noted at the 9 September evidence session, it is now confirmed in writing to the Committee.

I have also attached at Annex 3, the list of currently proposed amendments that the Department will be bringing forward at Consideration Stage. Officials would be happy to discuss the Department's response in further detail with Committee Members, if considered necessary.

In the meantime, if you require any further information please do not hesitate to contact the respective Departmental Officials Fred Frazer (tel: 028 90529272; e-mail fred.frazer@detini.gov.uk) or Irene McAllister (tel: 028 90529398; e-mail: irene.mcallister@detini.gov.uk)

Yours sincerely

Fiona Hepper
Energy Division

Annex 1

CLAUSE 10 – Damage to gas plant

10.(1) A person who intentionally or by culpable negligence –

(a) damages or allows to be damaged any gas plant provided by a gas conveyor;

(b) alters the index of any meter used for measuring the quantity of gas conveyed or supplied by a gas conveyor or a gas supplier; or

(c) prevents any such meter from duly registering the quantity of gas conveyed or supplied, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Where an offence has been committed under subsection (1)(a) 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.

(3) 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.

(4) A meter removed under subsection (3) shall be kept safely by the gas conveyor until the Authority authorises its destruction or disposal or repair.

Annex 2

Gas (Northern Ireland) Order 1996 (Paragraphs 5-8 of Schedule 5)

Exercise of powers of entry

5. —

(1) A power of entry conferred by or under this Schedule shall not be exercisable except—

- (a) with consent given by or on behalf of the occupier of the premises; or
- (b) under the authority of a warrant granted under paragraph 6;

so, however, that this sub-paragraph shall not apply where entry is sought in the case of emergency.

(2) Any person exercising powers of entry conferred by or under this Schedule may be accompanied by such other persons as may be necessary or expedient for the purpose for which the entry is made, or for the purposes of paragraph 7.

Warrant to authorise entry

6. —

(1) Where a justice of the peace is satisfied by complaint on oath—

(a) that admission to premises is reasonably required for the purpose specified in the complaint; and

(b) that a duly authorised person would, apart from paragraph 5, be entitled for that purpose to exercise in respect of the premises a power of entry conferred by or under this Schedule; and

(c) that—

(i) the consent of the occupier has been refused or seeking that consent would defeat the object of the entry; or

(ii) the premises are unoccupied;

he may issue a warrant under his hand authorising that duly authorised person to enter the premises.

(2) A warrant granted under this paragraph shall continue in force until—

(a) the time when the purpose for which the entry is required is satisfied; or

(b) the end of the period of 28 days from the day on which the warrant is granted,

whichever is the earlier.

Premises to be left secure and damage to be made good

7. Where, under any powers conferred by or under this Schedule, entry is made on any premises by a duly authorised person—

(a) he shall ensure that the premises are left no less secure by reason of the entry, and

(b) the relevant authority or the relevant licence holder (as the case may be) shall make good or pay compensation for any damage to property caused by that person, or by any person accompanying him in entering the premises, in taking any action in the premises authorised by or under this Schedule or in making the premises secure.

Penalty for obstruction

8. If any person intentionally obstructs any person exercising powers of entry conferred by or under this Schedule, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Annex 3

Energy Bill

Amendments to be Moved at Consideration Stage

Clause 10, page 6, line 41, after 'conveyor' insert^{3/4}

'(b) alters the index to any meter used for measuring the quantity of gas conveyed or supplied by a gas conveyor or gas supplier; or

(c) prevents any such meter from duly registering the quantity of gas conveyed or supplied,'

Clause 10, page 7, line 3, leave out 'subsection (1)' and insert 'subsection (1)(a)'

Clause 10, page 7, line 14, leave out 'or disposal' and insert ', disposal or repair'

Clause 24, page 16, line 8, leave out 'leave' and insert 'permission'

Clause 35, page 23, line 40, leave out 'Energy' and insert 'Utility'

Appendix 5

Research Papers



Research and Library Service Briefing Note

August 2009

Aidan Stennett

Gas (Northern Ireland) Order 2009

Paper 000/00 NIAR 000-00

1 Introduction

The following paper outlines the proposed reforms put forward DETI in their consultation on the Gas (Northern Ireland) Order 2009, focusing on the two which were of particular interest to the committee: the extension of powers of access; and guaranteed gas standards of performance. By way of comparison, DETI's proposals are outlined in conjunction with already existing regulatory measures in Great Britain and the Republic of Ireland which offer a precedent for DETI's planned changes.

2 DETI's proposed revisions and existing precedents

At present the exact nature of DETI's proposals has not been confirmed. The Department released a consultation document in July 2009; responses to that document must be submitted before 25 September 2009.

2a Extension of powers of access

Currently, the Gas Order (Northern Ireland) 1996, empowers the 'relevant authority' (the licence holder, the Department or any person authorised by the licence holder) 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 of entry 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).^[1]

DETI's revisions will extend this power to allow the licence holder to enter premises "for inspection purposes if they suspect the customers of meter tampering or other similar activities', actions which 'could have serious safety implications for the customers and the community as well as resulting in costs and loss of revenue for the companies'.^[2]

Such a provision already exists in the Electricity (Northern Ireland) Order 1992. Schedule 6, Paragraph 4 states that if any person 'intentionally or by culpable negligence damages' the supplier may discontinue the supply of electricity and/o remove the meter. Under this provision, the supplier (or a person authorised by the supplier) may enter the premises to cut off the supply and/or remove the meter, provided they give one working day notice and produce a 'duly authenticated document showing his authority'.^[3]

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.^[4] Comparable provisos for electricity suppliers in Great Britain are set out in Schedule 6 of the Electricity Act 1989.^[5]

In both cases entry is not allowable without the consent of the occupier or owner in the case of an unoccupied premise. However, a warrant may be obtained in cases where entry is refused. If such a warrant is obtained the authorised authority may enter by force and the occupier may be subject to liable to penalty for refusing entry. A warrant remains in force for as long as it takes to rectify the purpose for which it is granted or 28 days, whichever is sooner.^[6]

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). [7]

2b Guaranteed standards of performance

Currently under the Gas (Northern Ireland) Order 1996 the Department and the Utility Regulator are obliged to provide consumer protection to certain groups, namely the chronically sick, the disabled and those of pensionable age. It does not contain guaranteed standards of performance which should be met by "suppliers and those who convey gas". In the rest of the UK and the Republic of Ireland such standards do exist. As such, the Department are considering what individual and overall standards of performance may be introduced to ensure adequate protection is provided. The proposed regulations will require licence holders to pay compensation for not meeting individual standards, whilst collective standards will be measured by a licence holder's ability to meet percentage targets.[8]

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.

Table 1: NIE Individual Guaranteed Standards of Performance⁹

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

Service	Performance Level	Penalty Payment
Responding to queries on charges or payments	Within 5 working days to reply or make a refund if required	£25
Morning and afternoon appointments 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 Performance¹⁰

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

[9][10]

Table 3 Great Britain Gas Guaranteed Standards of Performance¹¹

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

Service	Performance Level	Penalty Payment
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^[12]

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 filing 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
Service	Performance Level	Penalty Payment
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

[1] The Gas (Northern Ireland) Order 1996, Schedule 5, Paragraphs 1-5
http://www.opsi.gov.uk/si/si1996/Uksi_19960275_en_10.htm#sdiv5

[2] Department of Enterprise, Trade and Investment, Consultation, Energy, Gas Bill – Policy Consultation (July 2009) p4

[3] The Electricity (Northern Ireland) Order 1992, Schedule 6, Paragraphs 1-8

[4] The Gas Act 1995, Schedule 2, Paragraphs 10, 25 & 26

[5] The Electricity Act 1989, Schedule 6, Paragraph 4

[6] Consumer Advice Notes, Consumer Protection, Gas and Electricity, Rights of Entry
http://www.cans.org.uk/index.php?id=23&tx_cans_pi1%5Bsection%5D=5&tx_cans_pi1%5Bnote%5D=24&tx_cans_pi1%5Bparagraph%5D=numbered_67 (accessed 14/08/09)

[7] The Energy Miscellaneous Act 1995, Sections 15-16
<http://www.irishstatutebook.ie/1995/en/act/pub/0035/sec0016.html#zza35y1995s16>

[8] Department of Enterprise, Trade and Investment, Consultation, Energy, Gas Bill – Policy Consultation (July 2009) p5

[9] 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 (accessed 20/08/09)

[10] 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 (accessed 20/08/09)

[11] 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 (accessed 21/09/08)

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



Research and Library Service
Briefing Note

6 September 2010

Aidan Stennett

Energy Bill
(Northern Ireland) 2010

Paper providing an Overview and Discussion of the Energy Bill (Northern Ireland) 2010

Paper 000/00 NIAR 000-00

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 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 company's 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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8 Gas storage provisions

8.1 Energy Bill

8.2 Discussion

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.^[1]
- 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).^[2]

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^[3]:

A person who intentionally or by culpable negligence damages or allows to be damaged any gas plant provided by a gas conveyer shall be guilty of an offence...^[4]

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 conveyer for making or maintaining a connection to the premises, the gas conveyer may disconnect the premises.^[5]

And:

Where an offence has been committed under subsection (1), in relation to a gas meter provided by a gas conveyer, 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 conveyer may disconnect the premises and may remove the meter.^[6]

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.^[7]

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 be granted a Justice of the Peace must be satisfied that 'admission to premises is reasonably required for the purpose specified in the complaint'.^[8]

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.^[9] Comparable provisos for electricity suppliers in Great Britain are set out in Schedule 6 of the Electricity Act 1989.^[10] 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.^[11]

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). ^[12]

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 was also support for bringing regulations inline with other jurisdictions and with the electricity industry.^[13]

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^[14].

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.^[15] (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.^[16]

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.^[17]

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.^[18]

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.^[19]

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.^[20]

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 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.^[21]

The Gas Act 1995^[22] and the Electricity Act 1989^[23] 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.^[24]

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.^[25]

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.[\[26\]](#)

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 or licensed gas suppliers and those who are licensed to convey gas'.[\[27\]](#)

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.[\[28\]](#)

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.[\[29\]](#)

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.

Table 1: NIE Individual Guaranteed Standards of Performance[\[30\]](#)

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

Service	Performance Level	Penalty Payment
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[\[31\]](#)

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 lest once a year
Response to letters	100% within 10 working days

Table 3 Great Britain Gas Guaranteed Standards of Performance[\[32\]](#)

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

Service	Performance Level	Penalty Payment
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[\[33\]](#)

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

Service	Performance Level	Penalty Payment
		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.^[34]

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.^[35]

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'.^[36]

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.[\[37\]](#)

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, procedures and resources be allowed in each companies cost base? And would this include financial compensation?[\[38\]](#)

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 Regulator 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.[\[39\]](#)

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.[\[40\]](#)

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[\[41\]](#).

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.[\[42\]](#)

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.[\[43\]](#)

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 is 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.^[44]

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.^[45]

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 carryout meter stamping and testing.^[46]

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'.^[47]

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'.^[48] As such, deemed contacts exist 'between a customer and a gas supplier where no written or verbal agreement has been exchanged'.^[49] The Bill states that a deemed contact will be effective 'from the time (the 'relevant time') when the owner or occupier began to take such a supply'.^[50]

Under the terms of the Bill gas suppliers are required to 'make, and from time to time revise' a scheme that sets out the terms and 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 schemes should also be sent to the Northern Ireland Authority for Utility Regulation (the Authority) and to the Consumer Council.^[51]

6.2 Precedent

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

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.^[57]

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.

Their 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.'^[58]

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.^[59]

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.^[60]

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.^[61]

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.^[62]

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 conveyer, therefore, refers to a person licensed to 'convey gas from one place to another in an area authorised by the license'.^[63] As such, the provisions set out in this section of the Bill will not apply to gas supply or gas storage firms.

Similarly, the Bill protects electricity transmission and distribution companies, adopting the definition found in Article 10(1b) of the Electricity (Northern Ireland) Order 1992.^[64] 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.^[65]

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;
- 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.^[66]

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.^[67]

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.

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?^[68]

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.^[69]

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?^[70]

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^[71].

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?^[72]

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 regimes, the Department considers it unnecessary for the Energy Bill to specifically provide for such alternative or supplementary measures.^[73]

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'.^[74]

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.^[75]

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.^[76]

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 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.^[77]

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

[2] The Gas (Northern Ireland) Order 1996, Schedule 5, Paragraphs 1-5
http://www.opsi.gov.uk/si/si1996/Uksi_19960275_en_10.htm#sdiv5

[3] The Energy Bill (Northern Ireland) 2010 (s14)

[4] Ibid s10

[5] Ibid

[6] Ibid

[7] The Gas (Northern Ireland) Order 1996 (schedule 5, paragraph 5-8)

[8] The Electricity (Northern Ireland) Order 1992 (Schedule 6, paragraph 4 – 9)
http://www.opsi.gov.uk/si/si1992/Uksi_19920231_en_11.htm#nsch6thepublicelectricitysupplycode

[9] The Gas Act 1995, Schedule 2, Paragraphs 10, 25 & 26
http://www.opsi.gov.uk/acts/acts1995/Ukpga_19950045_en_1

[10] The Electricity Act 1989, Schedule 6, Paragraph 4
http://www.opsi.gov.uk/acts/acts1989/ukpga_19890029_en_1

[11] Rights of Entry (Gas and Electricity Boards) Act 1954 (s2)
http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1954/cukpga_19540021_en_1

[12] The Energy Miscellaneous Act 1995, Sections 15-16
<http://www.irishstatutebook.ie/1995/en/act/pub/0035/sec0016.html#zza35y1995s16>

[13] Summary of DETI Energy Bill (formerly the Gas Bill) - Policy Consultation Response
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[14] Ibid

[15] Ibid

[16] Ibid

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[18] The Gas (Northern Ireland) Order 1996 (schedule 5, paragraph 5-8)

[19] Northern Ireland Assembly Official Report, Committee for Enterprise Trade and Investment, Draft Energy Bill: Briefing from DETI Energy Division (29/03/2010)
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[20] The Energy Bill (Northern Ireland) 2010

[21] The Electricity (Northern Ireland) Order 1992 (s1(4))
http://www.opsi.gov.uk/si/si1992/Uksi_19920231_en_11.htm#nsch6thepublicelectricitysupplycode

[22] The Gas Act 1995 (schedule 2b, paragraph 10)
http://www.opsi.gov.uk/acts/acts1995/ukpga_19950045_en_3#sch2

[23] The Electricity Act 1989 (schedule 6, paragraph 4)

[24] The Energy Miscellaneous Act 1995, Sections 15-16
<http://www.irishstatutebook.ie/1995/en/act/pub/0035/sec0016.html#zza35y1995s16>

[25] Ibid

[26] Summary of DETI Energy Bill (formerly the Gas Bill) - Policy Consultation Response
http://www.detini.gov.uk/departamental_response_to_energy_bill__formerly_the_gas_bill__consultation (accessed 30/07/10)

[27] The Energy Bill (Northern Ireland) 2010

[28] Ibid

[29] Ibid

[30] 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 (accessed 20/08/09)

[31] 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 (accessed 20/08/09)

[32] 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 (accessed 21/09/08)

[33] Bord Gáis Charter
<http://www.bordgais.ie/networks/index.jsp?1nID=102&2nID=115&3nID=348&nID=641>
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(accessed 30/07/10)

[35] Ibid

[36] Ibid

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[39] Committee for Enterprise , Trade and Investment , Official Report (Hansard) Draft Energy Bill: Briefing from DETI Energy Division 29 March 2010
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[41] Ibid

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[43] Ibid

[44] Ibid

[45] The Energy Bill (Northern Ireland) 2010

[46] The Gas Act 1986 (as amended) s17(5-6)
http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1986/cukpga_19860044_en_6#pt1-pb6-11g31

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http://www.detini.gov.uk/departamental_response_to_energy_bill__formerly_the_gas_bill__consultation
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[48] The Energy Shop Energy Contracts – what is a deemed contract?
<http://www.theenergyshop.com/help/faqs/contracts.do;jsessionid=0747114DD6A985BFDD501CAECF06FE46>
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[53] The Gas Act 1995 (schedule 2b, paragraph 8)
http://www.opsi.gov.uk/acts/acts1995/ukpga_19950045_en_3#sch2

[54] The Electricity Act 1989 (schedule 6, paragraph 3)

[55] Utilities Act 2000 (schedule 4, paragraph 3)
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[60] Ibid

[61] Ibid

[62] Ibid

[63] The Gas (Northern Ireland) Order 1996 (Article 8 (1a))
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[65] Northern Ireland Assembly Official Report Energy Bill: Second stage – the Minister of Enterprise Trade and Investment (15/06/10)
<http://archive.niassembly.gov.uk/record/reports2009/100615.htm>

[66] The Energy Bill (Northern Ireland) 2010

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Appendix 6

List of Witnesses

Ms Jenny Pyper Department of Enterprise, Trade and Investment

Mr Fred Frazer Department of Enterprise, Trade and Investment

Ms Susan Stewart Department of Enterprise, Trade and Investment

Ms Irene McAllister Department of Enterprise, Trade and Investment

Mr John French Consumer Council

Mr Richard Williams Consumer Council

Mr Brian McHugh Northern Ireland Authority for Utility Regulation