



Northern Ireland
Assembly

**COMMITTEE FOR
ENTERPRISE, TRADE AND
INVESTMENT**

**OFFICIAL REPORT
(Hansard)**

**Energy Bill:
Preliminary View**

14 October 2010

NORTHERN IRELAND ASSEMBLY

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INVESTMENT**

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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) Department of Enterprise, Trade and Investment
Ms Susan Stewart)

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.

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.

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.

The Chairperson:

We will go through the clauses and note your points.

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.

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.

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

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.

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.

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.

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.

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.

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.

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.

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?

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.

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.

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.

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.

The Chairperson:

What do you say to that, Mr Frazer?

Mr Frazer:

We will have to take legal advice on that.

Mr Cree:

It is important to get it right.

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.

Mr Cree:

Gas is more dangerous than electricity.

Mr Frazer:

I understand what you are saying.

Ms Stewart:

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

The Chairperson:

Would the time lag that Mr Cree mentioned also apply if an electricity meter had been interfered with?

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.

The Chairperson:

Does that time lag mean that someone could rectify any interference with an electricity or gas meter?

Mr Frazer:

Absolutely. I understand what you are saying.

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.

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.

Mr Cree:

With respect, that is designed to cover a different situation.

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.

The Chairperson:

That would be very helpful.

Mr Butler:

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

Mr Frazer:

Broadly speaking, yes.

Mr Butler:

That is going back quite a few years.

Ms Stewart:

There have been subsequent amendments to it.

Mr Butler:

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

Mr Frazer:

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

Mr Butler:

Have there been amendments over the years?

Ms Stewart:

Yes.

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.

Mr Butler:

Could amendments to the Energy Bill be out of sync with the Electricity Order?

Ms Stewart:

No.

Mr Frazer:

Well, —

Mr Butler:

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

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.

Mr Butler:

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

Mr Frazer:

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

The Chairperson:

Is the general intent to mirror the electricity provisions?

Mr Frazer:

That is correct.

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?

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.

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.

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.

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?

Mr Frazer:

The legislation proposes that the process would be to approach the householder first.

Mr Frew:

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

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.

The Committee Clerk:

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

Mr Frazer:

Yes, we will.

The Chairperson:

We move to clause 10.

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.

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.

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.

The Chairperson:

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

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”.

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.

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.

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.

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.

Ms Stewart:

It would result in there being two different approaches.

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.

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.

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.

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.

Mr Frew:

We do not have a problem with the clause.

The Chairperson:

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

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

Mr Frazer:

Yes, it does.

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.

The Chairperson:

That would be very helpful and would complete all of the amendments.

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.

The Chairperson:

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

We move to clause 11.

The Committee Clerk:

There were no issues or concerns raised about clause 11 during the consultation.

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.

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.”

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.

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.

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.

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.

Mr Cree:

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

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.

Mr Cree:

Is it independent?

Ms Stewart:

Yes.

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.

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.

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’.”

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

Members indicated assent.

The Chairperson:

We move to clause 25.

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?

Ms Stewart:

That is clause 35.

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.

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.

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

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.