

*These notes refer to the Energy Act (Northern Ireland) 2011  
(c.6) which received Royal Assent on 10 February 2011*

# Energy Act (Northern Ireland) 2011

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## **EXPLANATORY NOTES**

### **BACKGROUND AND POLICY OBJECTIVES**

In 2008, the Department was asked by both the Northern Ireland Authority for Utility Regulation (the **Utility Regulator**) and representatives of the gas and electricity industry to consider introducing legislation that would update current legislation applying to the natural gas (**gas**) sector in Northern Ireland, to enable that sector to benefit from policies that had already been successfully implemented in the electricity sector; the Department was also asked to consider introducing legislation to create a special administration regime applicable to both the gas and electricity sectors.

The policy objectives in relation to the major measures contained in the resulting Act are set out below.

#### *Special administration regime for the electricity and gas sector*

A special administration regime is a mechanism designed to ensure the uninterrupted operation of gas and electricity networks essential to security of supply in the event of actual or threatened insolvency of a network company.

In the normal course of events, the duties of a receiver or administrator appointed under the Insolvency (Northern Ireland) Order 1989 (the **Insolvency Order**) include obtaining the best possible price for the company assets on behalf of the creditors and shareholders. In the case of an energy network company, there is a risk that this might require the company to cease operating the relevant network. This would be against the wider public interest, especially if the security of electricity or gas supply to thousands of consumers were to be threatened.

The Act therefore introduces a 'special energy administration regime' for the energy sector. This safeguards the provision of essential electricity and gas supplies from the local networks, by providing that the relevant network shall continue to be maintained and developed as an efficient and economic system.

#### *Guaranteed standards of performance by gas companies*

The Gas (Northern Ireland) Order 1996 (the **Gas Order**) contains measures designed to provide consumer protection within the gas market. The Act enhances these consumer protection measures by introducing legislative

provisions that 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 convey gas. There is a similar regime in operation in the electricity industry.

Individual standards are applicable in relation to each customer separately and failure to meet individual standards will give rise to a duty to pay compensation. Overall standards are typically percentage targets to be achieved by companies over all their customers or classes of customers. Gas licence holders are subject to a duty to conduct their businesses with a view to achieving overall standards of performance which will be published.

### ***Provision for deemed contracts between gas companies and customers***

In the gas industry, supplies of gas are often taken without the customer having first agreed contractual terms with the supplier (for example, where a tenant moves into premises and immediately starts taking a supply of gas). The Act introduces a deemed contracts regime, which provides that a supply contract will be 'deemed' to have arisen between the supplier and the customer in such circumstances. It provides a sound and binding basis upon which suppliers can supply customers. As the terms and conditions of a deemed contract have not been expressly agreed between suppliers and customers they are subject to regulation. The regime broadly replicates the regime that is already in place in the electricity industry.

### ***Extension of existing powers of entry into premises for gas companies***

At present, the Gas Order provides a mechanism for gas companies to enter premises in certain circumstances. Such powers are specifically limited to situations concerning entry where there may be a danger to life or property (such as a gas leak). The equivalent regime in electricity goes further, by enabling electricity companies to legally enter customers' premises in situations that are not conditional on there being a danger to life or property (for example, where they wish to take a meter reading or where suspect that a customer has been tampering with an electricity meter). The Act therefore extends the gas companies' existing powers of entry so that they broadly align with the powers available to electricity companies.

### ***Other policy objectives***

The Act also implements a number of other policy objectives as follows.

Until now, there has been no criminal offence in gas legislation equivalent to the 'damage to electrical plant' provided by electricity legislation. The Act creates a new criminal offence to bring the gas industry in line with the position in the electricity industry.

Similarly, there was no provision in gas legislation equivalent to that in electricity legislation which exempts electrical equipment belonging to local electricity companies from judgment and bankruptcy processes. The Act

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therefore contains provisions to bring the gas industry in line with the position in the electricity industry.

The Act also makes a minor clarification in respect of the Gas Order provisions relating to the offence of storing gas without the requisite authorisation or exemption.

Finally, the Act makes an amendment to the Gas Order so that the Utility Regulator is not required to appoint meter examiners solely from members of its staff.