



## 2011 CHAPTER 6

### **PART 1**

#### **GAS**

##### *Standards of performance*

##### **Standards of performance in individual cases**

**1.—**(1) The Authority may, with the consent of the Department, make regulations prescribing such standards of performance in connection with—

- (a) the activities of gas suppliers, so far as affecting customers or potential customers of theirs, as in the Authority's opinion ought to be achieved in individual cases; and
- (b) the activities of gas conveyors, so far as affecting customers or potential customers of gas suppliers, as in the Authority's opinion ought to be achieved in individual cases.

(2) A gas supplier or gas conveyor who fails to meet a prescribed standard shall make to any customer or potential customer of a gas supplier who is affected by the failure and is of a prescribed description such compensation as may be determined by or under the regulations.

(3) The regulations may—

- (a) prescribe circumstances in which—
  - (i) gas suppliers are to inform customers or potential customers of their rights under this section;
  - (ii) gas conveyors are to inform customers or potential customers of gas suppliers of their rights under this section;

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- (b) prescribe such standards of performance in relation to any duty arising under paragraph (a) as, in the Authority's opinion, ought to be achieved in all cases;
  - (c) make provision as to the manner in which compensation under this section is to be made;
  - (d) prescribe circumstances in which gas suppliers or gas conveyors are to be exempted from any requirements of the regulations or this section; and
  - (e) if the Authority is of the opinion that the differences are such that no gas supplier or gas conveyor would be unduly disadvantaged in competing with other gas suppliers or (as the case may be) other gas conveyors, make different provision with respect to different gas suppliers or different gas conveyors.
- (4) Provision made under subsection (3)(c) may—
- (a) require or permit compensation to be made on behalf of gas conveyors by gas suppliers to customers or potential customers;
  - (b) require gas suppliers to provide services to gas conveyors in connection with the making of compensation under this section.
- (5) The making of compensation under this section in respect of any failure to meet a prescribed standard shall not prejudice any other remedy which may be available in respect of the act or omission which constituted that failure.
- (6) In this section “prescribed” means prescribed by regulations made under this section.

### **Standards of performance in individual cases: disputes**

2.—(1) Any dispute arising under section 1 or regulations made under that section—

[<sup>F1</sup>(a) may be referred to the Authority by either party or, with the agreement of either party, by the General Consumer Council, and such a reference shall be accompanied by such information as is necessary or expedient to allow a determination to be made in relation to the dispute; and]

(b) on such a reference, shall be determined by order made by the Authority.

(2) The Authority shall include in the order its reasons for reaching its decision with respect to the dispute.

(3) [<sup>F2</sup>Subject to subsection (3A), the practice and procedure] to be followed in connection with any such determination shall be such as may be prescribed by regulations made by the Department.

[<sup>F3</sup>(3A) The procedures established under subsection (3) shall provide for the determination of the dispute to be notified to the party making the reference within the requisite period or such longer period as the Authority may agree with that person.

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(3B) For the purposes of subsection (3A) the requisite period in any case means—

- (a) the period of 2 months from the date when the dispute was referred to the Authority; or
- (b) where the information sent to the Authority under subsection (1)(a) was in its opinion insufficient to enable it to make a determination, the period of 4 months from the date the dispute was referred to the Authority.]

(4) An order under subsection (1) shall be final and shall be enforceable as if it were a judgment of a county court.

#### **Textual Amendments**

- F1** S. 2(1)(a) substituted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 9(2)**
- F2** Words in s. 2(3) substituted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 9(3)**
- F3** S. 2(3A)(3B) inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 9(4)**

### **Overall standards of performance**

3.—(1) The Authority may from time to time determine—

- (a) such standards of overall performance in connection with the provision of gas supply services by gas suppliers as, in its opinion, ought to be achieved by them; and
- (b) such standards of overall performance in connection with the activities of gas conveyors as, in its opinion, ought to be achieved by them.

(2) The Authority may arrange for the publication, in such form and in such manner as it considers appropriate, of the standards determined under subsection (1).

(3) Different standards may be determined for different gas suppliers and different gas conveyors if the Authority is of the opinion that the differences are such that no gas supplier or gas conveyor would be unduly disadvantaged in competing with other gas suppliers or (as the case may be) other gas conveyors.

(4) It shall be the duty of every gas supplier and every gas conveyor to conduct business in such a way as can reasonably be expected to lead to the achievement by that gas supplier or gas conveyor of the standards set under this section.

### **Procedures for determining standards of performance**

4.—(1) Before prescribing standards of performance in regulations under section 1 the Authority shall—

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- (a) arrange for such research as the Authority considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected and consider the results; and
  - (b) consult such persons or bodies as appear to the Authority to be representative of persons likely to be affected.
- (2) Before determining standards of performance under section 3, the Authority shall—
- (a) arrange for such research as the Authority considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected and consider the results;
  - (b) publish a notice of its proposals in accordance with subsections (3) and (4) and consider any representations which are duly made in respect of those proposals; and
  - (c) consult the General Consumer Council and other persons or bodies mentioned in subsection (5).
- (3) The notice required by subsection (2)(b) is a notice—
- (a) stating that the Authority proposes to determine standards of performance and setting out the standards of performance proposed;
  - (b) stating the reasons why it proposes to determine those standards of performance; and
  - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations with respect to the proposals may be made.
- (4) A notice required by subsection (2)(b) shall be published in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of those likely to be affected by the proposals.
- (5) The persons or bodies to be consulted by the Authority under subsection (2)(c) are—
- (a) gas suppliers (in the case of standards of performance under section 3(1)(a)) or gas conveyors and gas suppliers (in the case of standards of performance under section 3(1)(b)); and
  - (b) persons or bodies appearing to the Authority to be representative of persons likely to be affected by the determination.
- (6) The Authority shall make arrangements for securing that notices under subsection (2)(b) and determinations under section 3 are made available to the public by whatever means it considers appropriate.
- (7) Any requirement for research or consultation under this section may be satisfied by research or consultation carried out in anticipation of its coming into operation.

### **Standards for promoting efficient use of gas**

5.—(1) The Authority may, after consulting gas suppliers and persons or bodies appearing to the Authority to be representative of persons likely to be affected, from time to time—

- (a) determine such standards of performance in connection with the promotion of the efficient use of gas by consumers as, in the Authority's opinion, ought to be achieved by gas suppliers; and
- (b) arrange for the publication, in such form and in such manner as the Authority considers appropriate, of the standards so determined.

(2) Different standards may be determined for different gas suppliers if the Authority is of the opinion that the differences are such that no gas supplier would be unduly disadvantaged in competing with other gas suppliers.

(3) Each gas supplier shall, in such form and manner and with such frequency as the Authority may direct, take steps to inform the customers of the supplier of—

- (a) the standards determined under this section which are applicable to that supplier; and
- (b) that supplier's level of performance as respects those standards.

### **Information with respect to levels of performance**

6.—(1) The Authority shall from time to time collect information with respect to—

- (a) the compensation made by gas suppliers and gas conveyors under section 1;
- (b) the levels of overall performance achieved by gas suppliers and gas conveyors;
- (c) the levels of performance achieved by gas suppliers in connection with the promotion of the efficient use of gas by consumers.

(2) At such times as may be specified in a direction given by the Authority, each gas supplier and gas conveyor shall give the following information to the Authority—

- (a) as respects each standard prescribed by regulations under section 1, the number of cases in which compensation was made and the aggregate amount or value of that compensation; and
- (b) as respects each standard determined under section 3, such information with respect to the level of performance achieved by the gas supplier or gas conveyor as the Authority may direct.

(3) A gas supplier or gas conveyor who without reasonable excuse fails to do anything required by subsection (2) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) The Authority shall at least once in every year arrange for the publication, in such form and in such manner as it considers appropriate, of such of the information collected by or given to it under this section as it may appear to the Authority expedient to give to customers or potential customers of gas suppliers.

(5) In arranging for the publication of any such information the Authority shall have regard to the need for excluding, so far as that is practicable—

- (a) any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that individual; and
- (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that body.

#### **Information to be given to customers about overall performance**

7.—(1) Each gas supplier and each gas conveyor shall, in such form and manner and with such frequency as the Authority may direct, take steps to inform the customers of gas suppliers of—

- (a) the standards of overall performance determined under section 3 which are applicable to that gas supplier or gas conveyor; and
- (b) the levels of performance achieved by that gas supplier or gas conveyor as respects each of those standards.

(2) In giving any such direction, the Authority shall not specify a frequency of less than once in every period of 12 months.

#### **Procedures for dealing with complaints**

8.—(1) Each gas supplier shall establish a procedure for dealing with complaints made by customers or potential customers of the supplier in connection with the provision of gas supply services.

(2) No such procedure shall be established, and no modification of such a procedure shall be made, unless—

- (a) the gas supplier has consulted the General Consumer Council; and
- (b) the proposed procedure or modification has been approved by the Authority.

(3) The gas supplier shall—

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- (a) publicise the procedure in such manner as may be approved by the Authority; and
  - (b) send a description of the procedure, free of charge, to any person who asks for one.
- (4) The Authority may give a direction to any gas supplier requiring the supplier to review the procedure or the manner in which it operates.
- (5) A direction under subsection (4)—
- (a) may specify the manner in which the review is to be conducted; and
  - (b) shall require a written report of the review to be made to the Authority.
- (6) Where the Authority receives a report under subsection (5)(b), it may, after consulting the gas supplier, direct the supplier to make such modifications of—
- (a) the procedure; or
  - (b) the manner in which the procedure operates,
- as may be specified in the direction.
- (7) Subsection (2) does not apply to any modification made in compliance with a direction under subsection (6).

#### **Amendments to Energy Order relating to standards of performance**

9.—(1) The Energy (Northern Ireland) Order 2003 (NI 6) is amended as follows.

(2) In Article 14 (principal objective and general duties in relation to gas) in paragraph (6)(b) after “this Order” insert “ or the Energy Act (Northern Ireland) 2011 ”.

(3) In Article 41(2) (definitions for purposes of enforcement provisions) in the definition of “relevant requirement” for sub-paragraph (b) substitute—

- “(b) in relation to a gas licence holder, any duty or other requirement imposed on him by or under—
  - (i) any of sections 3(4), 5(3), 7 or 8 of the Energy Act (Northern Ireland) 2011; or
  - (ii) an order under Article 27(4)(b).”.

(4) In Article 45(2) (penalty for failure of electricity supplier to achieve standard of performance)—

- (a) after “is satisfied” insert “ (a) ”; and
- (b) after “Electricity Order” insert “or
  - (b) that a gas licence holder has failed or is failing to achieve any standard of performance prescribed under section 1 of the Energy Act (Northern Ireland) 2011,”.

(5) In Article 51(1) (power to require in “or

- (c) (in the case of a gas licence holder) may be failing or may have failed to achieve any standard of performance prescribed under section 1 of the Energy Act (Northern Ireland) 2011,”.

### *Miscellaneous*

#### **Damage to gas plant**

**10.—**(1) A person who intentionally or recklessly—

- (a) damages or allows to be damaged any gas plant provided by a gas conveyer;
- (b) alters the index to any meter used for measuring the quantity of gas conveyed or supplied by a gas conveyer or 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 conveyer for making or maintaining a connection to the premises, the gas conveyer may disconnect the premises.

(3) 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.

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

#### **Exemption of gas plant from certain processes**

**11.—**(1) Any gas plant owned by or let for hire or lent to a customer by a relevant licence holder and marked or impressed with a sufficient mark or brand indicating that licence holder as the owner thereof—

- (a) shall continue to be the property of that licence holder notwithstanding that it may be fixed or fastened to any part of the premises in which it may be situated;
- (b) shall be exempt from seizure under the Judgments Enforcement (Northern Ireland) Order 1981 (NI 6);
- (c) shall not be taken in execution under proceedings in bankruptcy against the person in whose possession it may be.



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- (2) In subsection (1) “a relevant licence holder” means—
- (a) a gas conveyor; or
  - (b) a gas supplier.

### **Deemed contracts for supply in certain cases**

**12.—**(1) Where a gas supplier supplies gas to 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 as from the time (“the relevant time”) when the supplier began so to supply gas to the consumer.

(2) Where—

- (a) the owner or occupier of any premises takes a supply of gas which has been conveyed to those premises by a gas conveyor;
  - (b) that supply is not made by a gas supplier or pursuant to an exemption under Article 7 of the Gas Order; and
  - (c) a supply of gas so conveyed has been previously made by a gas supplier,
- the owner or occupier shall be deemed to have contracted with the appropriate supplier for the supply of gas as from the time (“the relevant time”) when the owner or occupier began to take such a supply.

(3) Nothing in subsection (2) shall be taken to afford a defence in any criminal proceedings.

(4) The Authority shall publish a document containing provision for determining the “appropriate supplier” for the purposes of subsection (2) and may revise any such document published by it and where it does so it shall publish the revised document.

(5) The express terms and conditions of a contract which, by virtue of subsection (1) or (2), is deemed to have been made shall be provided for by a scheme made under this section.

(6) Each gas supplier shall make, and from time to time revise, a scheme for determining the terms and conditions which are to be incorporated in the contracts which, by virtue of subsection (1) or (2), are to be deemed to have been made.

(7) The terms and conditions so determined may include terms and conditions for enabling the gas supplier to determine, in any case where the meter is not read immediately before the relevant time, the quantity of gas which is to be treated as supplied to the consumer, or taken by the owner or occupier of the premises, during the period beginning with the relevant time and ending with—

- (a) the time when the meter is first read after the relevant time; or
- (b) the time when the supplier ceases to supply gas to the consumer, or the owner or occupier ceases to take a supply of gas,

whichever is the earlier.

(8) A scheme under this section may make different provisions for different cases or classes of cases, or for different areas, determined by, or in accordance with, the provisions of the scheme.

(9) As soon as practicable after a gas supplier makes a scheme under this section, or a revision of such a scheme, the supplier shall—

- (a) publish, in such manner as the supplier considers appropriate for bringing it to the attention of persons likely to be affected by it, a notice stating the effect of the scheme or revision;
- (b) send a copy of the scheme or revision to the Authority and to the General Consumer Council; and
- (c) if so requested by any other person, send such a copy to that person without charge.

### **Modification of conditions of gas supply licences in relation to deemed contracts**

**13.—**(1) Where the Authority considers it appropriate to do so in connection with the provision made by section 12, it may, with the consent of the Department, make—

- (a) modifications of the conditions of a gas supply licence held by a particular person;
- (b) modifications of the standard conditions of gas supply licences.

(2) The power to make modifications under this section includes power to make incidental, consequential or transitional modifications.

(3) Before making a modification under this section, the Authority must consult—

- (a) the holder of any licence being modified; and
- (b) such other persons as the Authority considers appropriate.

(4) Subsection (3) may be satisfied by consultation that took place wholly or partly before the commencement of this section.

(5) The Authority must publish every modification made by it under this section.

(6) The publication must be in such manner as the Authority considers appropriate.

(7) A modification under subsection (1)(a) of part of a standard condition of a gas supply licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of the Gas Order.

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(8) Where the Authority makes modifications under subsection (1)(b) of the standard conditions of gas supply licences, the Authority must—

- (a) make (as nearly as may be) the same modifications of those standard conditions for the purposes of their incorporation in gas supply licences granted after that time; and
- (b) publish the modifications in such manner as it considers appropriate.

(9) The Authority's powers under this section are exercisable only during the 18 months beginning with the commencement of this section.

(10) In this section “gas supply licence” means a licence under Article 8(1)(c) of the Gas Order.

### **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—

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- (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.

### **Storage of gas**

**15** In Article 6 of the Gas Order (licences) at the end add—

“(6) 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.”.

### **Appointment of meter examiners**

**16.—**(1) Article 22 of the Gas Order (meter testing and stamping) is amended as follows.

(2) In paragraphs (2), (7) and (8) omit the words “who are members of the Director's staff”.

**Changes to legislation:**

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