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STATUTORY INSTRUMENTS

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**1996 No. 275**

**The Gas (Northern Ireland) Order 1996**

**PART II**

**GAS SUPPLY AND ASSOCIATED ACTIVITIES**

*Interpretation*

**Interpretation of Part II**

**3.—(1) In this Part—**

“the 1973 Act” means the Fair Trading Act 1973;

“the 1980 Act” means the Competition Act 1980;

“exemption” means an exemption under Article 7;

“gas plant” includes any plant, equipment, pipe-line or apparatus used for, or for purposes connected with, the conveyance, storage or supply of gas;

“gas storage facility” means any facility designed or adapted for the storage of gas in bulk (whether in a liquid state or not), not being a pipe or other conduit for the conveyance of gas;

“the General Consumer Council” means the General Consumer Council for Northern Ireland;

“information” includes accounts, estimates and returns;

“licence” means a licence granted under Article 8;

“licence holder” means the holder of a licence granted under Article 8;

“the Monopolies Commission” means the Monopolies and Mergers Commission.

(2) In this Part “gas” means any substance which is in a gaseous state at a temperature of 15°C and a pressure of 1013.25 millibars and—

(a) consists wholly or mainly of methane; or

(b) is specified in an order made by the Department; or

(c) consists wholly or mainly of—

(i) a mixture of two or more substances falling within sub-paragraph (a) or (b); or

(ii) a combustible mixture of one or more such substances and air.

(3) This Part applies only in relation to gas supplied, or intended to be supplied, through pipes; and references in this Part to gas shall be construed accordingly.

### *Introductory*

#### **The Director General of Gas for Northern Ireland**

4.—(1) The Department shall appoint a person to be known as the Director General of Gas for Northern Ireland (“the Director”) for the purpose of carrying out the functions assigned to him by this Order.

(2) An appointment of a person to hold office as the Director shall be for a term not exceeding 5 years; but previous appointment to that office shall not affect eligibility for re-appointment.

(3) The Director may at any time resign his office as the Director by reasonable notice addressed to the Department; and the Department may remove any person from that office on the ground of incapacity or misbehaviour.

(4) Subject to paragraphs (2) and (3), the Director shall hold and vacate office as such in accordance with the terms of his appointment.

(5) The provisions of Schedule 1 shall have effect with respect to the Director.

#### **General duties of the Department and Director**

5.—(1) It shall be the duty of the Department and the Director to exercise their functions under this Part in accordance with the following provisions of this Article.

(2) It shall be the duty of the Department and the Director to exercise their functions under this Part in the manner which the Department or the Director considers is best calculated—

- (a) to promote the development and maintenance of an efficient, economic and co-ordinated gas industry in Northern Ireland; and
- (b) to secure that licence holders are able to finance the carrying on of the activities which they are authorised or required by their licences to carry on.

(3) Subject to paragraph (2), it shall be the duty of the Department and the Director to exercise their functions under this Part in the manner which the Department or the Director considers is best calculated—

- (a) to protect the interests of consumers of gas supplied by persons authorised by licences to supply gas in respect of—
  - (i) the prices charged and the other terms of supply;
  - (ii) the continuity of supply; and
  - (iii) the quality of the gas supply services provided;
- (b) to protect the interests of licence holders in respect of the prices at which, and the other terms on which, any services are provided by one licence holder to another;
- (c) to promote the efficient use of gas supplied to consumers;
- (d) to protect the public from dangers arising from the conveyance, storage, supply or use of gas; and
- (e) to facilitate competition between persons whose activities consist of or include conveying, storing or supplying gas;

and to take into account, in exercising those functions, the effect on the environment (whether by way of pollution or otherwise) of activities connected with the conveyance, storage or supply of gas.

(4) In performing the duty under paragraph (3)(a)(iii), the Department or Director shall take into account, in particular, the interests of those who are chronically sick, disabled or of pensionable age.

(5) A person is of pensionable age for the purposes of paragraph (4) if—

- (a) he has attained pensionable age (within the meaning given by the rules in paragraph 1 of Schedule 2 to the Pensions (Northern Ireland) Order 1995); or
- (b) in the case of a man born before 6th April 1955, he is the same age as a woman who has attained pensionable age (within the meaning so given).

### *Licensing of supply of gas and associated activities*

#### **Prohibition on unlicensed supply of gas and associated activities**

- 6.—(1) Subject to Article 7, a person who—
- (a) conveys gas from one place to another;
  - (b) stores gas in a gas storage facility; or
  - (c) supplies gas to any other person or to any premises,
- shall be guilty of an offence unless he is authorised to do so by a licence.
- (2) A person guilty of an offence under this Article shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (3) No proceedings shall be instituted in respect of an offence under this Article except by or on behalf of the Department or the Director.

#### **Exemptions from Article 6**

- 7.—(1) The Department may, after consultation with the Director, by order grant exemption from sub-paragraph (a), (b) or (c) of Article 6(1)—
- (a) either to a person or to persons of a class;
  - (b) either generally or to such extent as may be specified in the order; and
  - (c) either unconditionally or subject to such conditions as may be so specified.
- (2) An exemption granted to persons of a class, and the revocation of such an exemption, shall be published in such manner as the Department considers appropriate for bringing it to the attention of persons likely to be affected.
- (3) An exemption, unless previously revoked in accordance with any term contained in the exemption, shall continue in operation for such period as may be specified in or determined by or under the exemption.
- (4) Without prejudice to the generality of paragraph (1)(c), conditions included by virtue of that sub-paragraph in an exemption may require any person carrying on any activity in pursuance of the exemption—
- (a) to comply with any direction given by the Department or the Director as to such matters as are specified in the exemption or are of a description so specified;
  - (b) except in so far as the Department or the Director consents to his doing or not doing them, not to do or to do such things as are specified in the exemption or are of a description so specified; and
  - (c) to refer for determination by the Department or the Director such questions arising under the exemption as are specified in the exemption or are of a description so specified.
- (5) If any condition of an exemption granted to persons of a class is not complied with by any person of that class, the Department may give to that person a direction declaring that the exemption

is revoked, so far as relating to that person, to such extent and as from such date as may be specified in the direction.

**Licences authorising supply, etc.**

8.—(1) The Department after consultation with the Director, or the Director with the consent of, or in accordance with a general authority given by, the Department, may grant a licence authorising any person to do all or any of the following, namely—

- (a) to convey gas from one place to another in an area authorised by the licence;
- (b) to store gas in a specified gas storage facility;
- (c) to supply gas to specified persons or premises.

In this paragraph and paragraph (2) “specified” means specified in the licence, or of a class or description, or in an area, so specified.

(2) The Department after consultation with the Director, or the Director with the consent of, or in accordance with a general authority given by, the Department, may—

- (a) extend a licence granted under paragraph (1)(a) or (c) by increasing the area authorised by the licence; or
- (b) extend a licence granted under paragraph (1)(b) by adding to the specified gas storage facilities;
- (c) extend a licence granted under paragraph (1)(c) by adding to the specified persons or premises.

(3) An application for a licence or extension shall be made in the prescribed manner and shall be accompanied by such fee (if any) as may be prescribed; and within 14 days from the making of such an application, the applicant shall publish a copy of the application in the prescribed manner.

(4) Before granting a licence or extension under this Article, the Department or the Director shall give notice—

- (a) stating that the Department or the Director, as the case may require, proposes to grant the licence or extension;
- (b) stating the reasons why it is proposed to grant the licence or extension; and
- (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed licence or extension may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(5) A licence or extension shall be in writing and, unless previously revoked in accordance with any term contained in it, a licence shall continue in force for such period as may be specified in or determined by or under the licence.

(6) As soon as practicable after granting or extending a licence, the Department or Director shall give notice stating that the licence or extension has been granted.

(7) A notice under paragraph (4) or (6) shall be given by publishing the notice in such manner as the Department or the Director considers appropriate for bringing it to the attention of persons likely to be affected by the grant or extension of the licence.

(8) Neither the requirement to consult imposed by paragraph (1) nor paragraphs (3) and (4) shall apply to the granting of any licences which are granted in the period of 3 months beginning with the day on which this Article comes into operation.

(9) Any sums received by the Director under this Article shall be paid into the Consolidated Fund.

### **Exclusive licences under Article 8(1)(a) or (c)**

9.—(1) A licence granted under Article 8(1)(a) or (c) may, if the grantor having regard to the duties imposed by Article 5 considers it appropriate, confer on the holder of the licence, for a period specified in the licence, exclusive authority to carry on designated activities.

(2) In this Article, in relation to a licence—

“designated activities” means such of the activities authorised by the licence as are designated in the licence for the purposes of this Article, and activities may be so designated by reference to a class or description of activities or by reference to any area in which they are authorised to be carried on by the licence;

“specified period” means the period specified in the licence under paragraph (1) or substituted for that period under paragraph (5)(a) or (7)(a).

(3) Where a licence granted under Article 8(1)(a) or (c) confers on the holder exclusive authority to carry on designated activities, no other licence shall be granted under Article 8(1)(a) or (c) so as to authorise any other person to carry on any such designated activities in the specified period.

(4) Conditions included under Article 10(1)(a) in a licence conferring on the holder exclusive authority to carry on any designated activities may make special provision in relation to the carrying on of such activities within the specified period.

(5) Where the grantor is satisfied on reasonable grounds that the holder of a licence conferring exclusive authority to carry on designated activities has contravened any relevant condition of his licence, the grantor may modify the licence—

- (a) so as to substitute for the specified period such shorter period as the grantor may determine;
- (b) so as to exclude from those activities which are designated activities for the purposes of this Article such activities as the grantor may determine; or
- (c) so as to remove from the licence those provisions which confer exclusive authority to carry on designated activities.

(6) In paragraph (5) “relevant condition” means a condition of the licence (whether one included by virtue of paragraph (4) or not) which is identified in the licence as a relevant condition for the purposes of this Article.

(7) The grantor may, with the consent of the holder of a licence conferring exclusive authority to carry on designated activities, modify the licence—

- (a) so as to substitute for the specified period such longer period as the grantor may determine;
- (b) so as to add to those activities which are designated activities for the purposes of this Article such activities as the grantor may determine.

(8) Before making any modifications under paragraph (5) or (7) the grantor shall give notice—

- (a) stating that the grantor proposes to make the modifications and setting out their effect;
- (b) stating the reasons why the grantor proposes to make the modifications; and
- (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are so made and not withdrawn.

(9) A notice under paragraph (8) shall be given—

- (a) by publishing the notice in such manner as the grantor considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
- (b) by sending a copy of the notice to the holder of the licence.

## Conditions of licences

10.—(1) A licence may include—

- (a) such conditions (whether or not relating to the activities authorised by the licence) as appear to the grantor to be requisite or expedient having regard to the duties imposed by Article 5; and
- (b) conditions requiring the rendering to the grantor of a payment on the grant of the licence, or payments during the currency of the licence, or both, of such amount or amounts as may be determined by or under the licence.

(2) Without prejudice to the generality of paragraph (1)(a), conditions included in a licence by virtue of that sub-paragraph—

- (a) may require the licence holder to enter into agreements with other persons for the use of any gas plant of his (wherever situated and whether or not used for the purpose of carrying on the activities authorised by the licence) for such purposes as may be specified in the conditions; and
- (b) may include provision for determining the terms on which such agreements are to be entered into.

(3) Conditions included in a licence under paragraph (1)(a) may require the licence holder—

- (a) to comply with any direction given by the Department or the Director as to such matters as are specified in the licence or are of a description so specified;
- (b) except in so far as the Department or the Director consents to his doing or not doing them, not to do or to do such things as are specified in the licence or are of a description so specified;
- (c) to refer for determination by the Department or the Director such questions arising under the licence as are specified in the licence or are of a description so specified;
- (d) to refer for approval by the Department or the Director such things falling to be done under the licence, and such arrangements, contracts or agreements made before the grant of the licence, as are specified in the licence or are of a description so specified; and
- (e) to provide the Department or the Director with, or publish, such information relating to the activities authorised by the licence as appear to the Department or the Director to be requisite or expedient having regard to the duties imposed by Article 5.

(4) Conditions included in a licence under paragraph (1)(a) may—

- (a) instead of specifying or describing any arrangements, contracts or agreements to which they apply, refer to arrangements, contracts or agreements designated (whether before or after the imposition of the conditions) by the Department or the Director; and
- (b) instead of containing any provisions which fall to be made, refer to provisions set out in documents so designated and direct that those provisions shall have such effect as may be specified in the conditions.

(5) Conditions included in a licence may contain provision for the conditions to cease to have effect or be modified at such times, in such manner and in such circumstances as may be specified in or determined by or under the conditions.

(6) Any provision included under paragraph (5) in a licence shall have effect in addition to the provision made by this Part with respect to the modification of the conditions of a licence.

(7) Any sums received by the Director in consequence of any condition of a licence shall be paid into the Consolidated Fund.

### **Standard conditions of licences**

11.—(1) Such conditions as may be determined by the Department, and published by it in such manner as it considers appropriate, in relation to licences under sub-paragraph (a), (b) or (c) of Article 8(1) shall be standard conditions for the purposes of licences under that sub-paragraph.

(2) Subject to paragraph (3) and Articles 14(2), 17(2) and 18(2), each condition which by virtue of paragraph (1) is a standard condition for the purposes of licences under sub-paragraph (a), (b) or (c) of Article 8(1) shall be incorporated (that is to say, incorporated by reference) in each licence under that sub-paragraph.

(3) The Department, or the Director with the consent of the Department or in accordance with a general authority given by the Department under Article 8, may, in granting a licence, modify any of the standard conditions to such extent as the Department or the Director considers requisite to meet the circumstances of the particular case.

(4) The modification under paragraph (3) of a condition of a licence shall not prevent so much of the condition as is not modified being regarded as a standard condition for the purposes of this Part.

### **Assignment of licences**

12.—(1) A licence shall be capable of being assigned either generally or—

- (a) in the case of a licence under Article 8(1)(a), so far as relating to the whole or any part of an authorised area;
- (b) in the case of a licence under Article 8(1)(b), so far as relating to any specified gas storage facility;
- (c) in the case of a licence under Article 8(1)(c), so far as relating to any specified persons or premises,

but only if it includes a condition authorising such assignment.

In this paragraph “specified” means specified in the licence, or of a class or description, or in an area, so specified.

(2) A licence shall not be capable of being assigned except with the consent of the Director.

(3) In deciding whether to give his consent under paragraph (2), the Director shall apply the same criteria as he would apply if—

- (a) in the case of a general assignment, he were deciding whether to grant a corresponding licence to the assignee;
- (b) in the case of any other assignment, he were deciding whether—
  - (i) to grant to the assignee a licence corresponding to so much of the licence as is proposed to be assigned; and
  - (ii) to grant to the assignor a licence corresponding to so much of the licence as is proposed to be retained.

(4) Subject to paragraph (5), a consent under paragraph (2) may be given subject to compliance with—

- (a) such modification or other conditions as the Director considers necessary or expedient for the purpose of protecting the interests of consumers; and
- (b) such incidental or consequential modification conditions as he considers necessary or expedient.

(5) The Director shall give the Department not less than 28 days' notice of any proposal of his to impose a modification condition; and if, before the expiry of the time specified in the notice,

the Department directs the Director not to impose the condition, the Director shall comply with the direction.

(6) A licence may include conditions which must be complied with before the licence can be assigned.

(7) An assignment, or purported assignment, of a licence shall be void —

- (a) if the licence is not capable of assignment;
- (b) if the assignment, or purported assignment, is in breach of a condition of the licence; or
- (c) if there has, before the assignment or purported assignment, been a contravention of a condition subject to compliance with which the consent required by paragraph (2) is given.

(8) A licence shall not be capable of being assigned under any other provision of this Part.

(9) In this Article—

“assignment” includes any form of transfer;

“modification condition” means a condition requiring or otherwise providing for the making of modifications to the conditions of a licence;

and the reference in this paragraph to a licence includes (where applicable) a reference to so much of a licence as is retained by an assignor.

### **Powers of licence holders**

**13.—**(1) Subject to paragraph (2)—

- (a) Schedule 2 (which makes provision with respect to the compulsory acquisition of land); and
- (b) Schedule 3 (which confers other powers in relation to land and makes other provision),

shall, to the extent that his licence so provides, have effect in relation to the holder of a licence under Article 8(1)(a) or (b); and references in those Schedules to a licence holder shall be construed accordingly.

(2) Where any provision of either of the Schedules mentioned in paragraph (1) is applied to a licence holder by his licence, it shall have effect subject to such restrictions, exceptions and conditions as may be included in the licence for the purpose of qualifying that provision as so applied or any power or right conferred by or under it.

### *Modification of licences*

#### **Modification by agreement**

**14.—**(1) Subject to the following provisions of this Article, the Director may—

- (a) modify the conditions of a particular licence; or
- (b) modify the standard conditions of licences under sub-paragraph (a), (b) or (c) of Article 8(1).

(2) Where at any time the Director modifies under paragraph (1)(b) the standard conditions of licences under sub-paragraph (a), (b) or (c) of Article 8(1), he—

- (a) shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences under that sub-paragraph granted after that time; and
- (b) may make such incidental or consequential modifications as he considers necessary or expedient of any conditions of licences under that sub-paragraph granted before that time.



- (3) Before making modifications under this Article, the Director shall give notice—
- (a) stating that he proposes to make the modifications and setting out their effect;
  - (b) stating the reasons why he proposes to make the modifications; and
  - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

- (4) A notice under paragraph (3) shall be given—
- (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
  - (b) by sending a copy of the notice to the holder of the licence or, as the case may be, the relevant licence holders and to the Department.
- (5) If, within the time specified in the notice under paragraph (3), the Department directs the Director not to make any modification, the Director shall comply with the direction.
- (6) The Director shall not make any modifications under paragraph (1)(a) unless—
- (a) the holder of the licence has consented to the modifications; and
  - (b) in the case of standard conditions of a licence, the Director is of the opinion that the modifications—
    - (i) are requisite to meet the circumstances of the particular case; and
    - (ii) are such that no other licence holder would be unduly disadvantaged in competing with other licence holders (including the holder of the licence).
- (7) The Director shall not make any modifications under paragraph (1)(b) unless—
- (a) the percentage given by each of paragraphs (8) and (9) is not less than 90 per cent;
  - (b) the percentage given by paragraph (8) is not less than 90 per cent and no relevant activities have been carried on by relevant licence holders; or
  - (c) paragraph (10) applies.
- (8) The percentage given by this paragraph is the fraction given by the following formula expressed as a percentage, namely—

$$\frac{C}{C + N}$$

where—

- C = the number of consenting holders;  
 N = the number of non-consenting holders.

- (9) The percentage given by this paragraph is the fraction given by the following formula expressed as a percentage, namely—

$$\frac{C}{C + N}$$

where—

- C = the volume of gas to which relevant activities carried on by consenting holders relate;  
 N = the volume of gas to which relevant activities carried on by non-consenting holders relate,

as estimated (in each case) by the Director on the basis of the information available to him.

(10) This paragraph applies where the Director is of the opinion—

- (a) that the effect of the standard conditions is such as to impose a burden affecting relevant licence holders in the carrying on of activities to which the modifications relate;
- (b) that the modifications would remove or reduce the burden without removing any necessary protection; and
- (c) that the modifications are such that no relevant licence holder would be unduly disadvantaged in competing with other relevant licence holders.

(11) Where at any time the Director modifies standard conditions under paragraph (2)(a) for the purposes of their incorporation in licences under sub-paragraph (a), (b) or (c) of Article 8(1) granted after that time, he shall publish the modifications in such manner as he considers appropriate.

(12) In this Article, in relation to modifications of standard conditions under paragraph (1)(b)—

- “consenting holder” means a relevant licence holder who has consented to the modifications;
- “non-consenting holder” means a relevant licence holder who has not so consented;
- “relevant activity” means an activity to which the modifications relate and which is carried on in the period of 12 months immediately preceding the making of the modifications;
- “relevant licence holder” means a licence holder whose licence incorporates the standard conditions.

(13) The Department may by order substitute for the percentage for the time being specified in paragraph (7)(a) and (b) such other percentage as the Department thinks fit.

### **Modification references to Monopolies Commission**

**15.—**(1) The Director may make to the Monopolies Commission a reference which is so framed as to require the Commission to investigate and report on the questions—

- (a) whether any matters which—
  - (i) relate to the carrying on of activities authorised or required by a particular licence; and
  - (ii) are specified in the reference,
 operate, or may be expected to operate, against the public interest; and
- (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the relevant conditions, that is to say, the conditions of the licence.

(2) The Director may make to the Monopolies Commission a reference which is so framed as to require the Commission to investigate and report on the questions—

- (a) whether any matters which—
  - (i) relate to the carrying on of activities authorised or required by licences under sub-paragraph (a), (b) or (c) of Article 8(1); and
  - (ii) are specified in the reference,
 operate, or may be expected to operate, against the public interest; and
- (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the relevant conditions, that is to say, the standard conditions of licences under that sub-paragraph.

(3) The Director may, at any time, by notice given to the Monopolies Commission vary a reference under this Article by adding to the matters specified in the reference or by excluding from the

reference some or all of the matters so specified; and on receipt of any such notice the Commission shall give effect to the variation.

(4) The Director may specify in a reference under this Article, or a variation of such a reference, for the purpose of assisting the Monopolies Commission in carrying out the investigation on the reference—

- (a) any effects adverse to the public interest which, in his opinion, the matters specified in the reference or variation have or may be expected to have; and
- (b) any modifications of the relevant conditions by which, in his opinion, those effects could be remedied or prevented.

(5) As soon as practicable after making a reference under this Article or a variation of such a reference, the Director—

- (a) shall serve a copy of the reference or variation on the licence holder or, as the case may be, the relevant licence holders; and
- (b) shall publish particulars of the reference or variation in such manner as he considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it.

(6) The Director shall also send a copy of a reference under paragraph (2), or a variation of such a reference, to the Department; and if, before the end of the period of 28 days from the day on which the Department receives the copy of the reference or variation, the Department directs the Monopolies Commission not to proceed with the reference or, as the case may require, not to give effect to the variation, the Commission shall comply with the direction.

(7) It shall be the duty of the Director, for the purpose of assisting the Monopolies Commission in carrying out an investigation on a reference under this Article, to give to the Commission—

- (a) any information in his possession which relates to matters falling within the scope of the investigation and—
  - (i) is requested by the Commission for that purpose; or
  - (ii) is information which, in his opinion, it would be appropriate for that purpose to give to the Commission without any such request; and
- (b) any other assistance which the Commission may require, and which it is within his power to give, in relation to any such matters;

and the Commission, for the purpose of carrying out any such investigation, shall take account of any information given to them for that purpose under this paragraph.

(8) In determining for the purposes of this Article whether any particular matter operates, or may be expected to operate, against the public interest, the Monopolies Commission shall have regard to the matters as respects which duties are imposed on the Department and the Director by Article 5.

(9) Sections 70 (time limit for report on merger reference), 81 (procedure in carrying out investigations) and 85 (attendance of witnesses and production of documents) of the 1973 Act, Part II of Schedule 3 to that Act (performance of functions of the Monopolies Commission) and section 24 of the 1980 Act (modifications of provisions about performance of such functions) shall apply in relation to references under this Article as if—

- (a) the functions of the Commission in relation to those references were functions under the 1973 Act;
- (b) “merger reference” included a reference under this Article;
- (c) in the said section 70, references to the Secretary of State were references to the Director and the reference to three months were a reference to six months;

- (d) in paragraph 11 of the said Schedule 3, the reference to section 71 of the 1973 Act were a reference to paragraph (3) of this Article; and
  - (e) paragraph 16(2) of that Schedule were omitted.
- (10) In this Article and Articles 16 and 17—
- “relevant conditions” has the meaning given by paragraph (1) or (2);
  - “relevant licence holder”—
- (a) in relation to a reference under paragraph (2), means the holder of a licence to which the reference relates;
  - (b) in relation to modifications of relevant conditions within the meaning given by that paragraph, means the holder of a licence which incorporates the conditions.

### **Reports on modification references**

- 16.—**(1) In making a report on a reference under Article 15, the Monopolies Commission—
- (a) shall include in the report definite conclusions on the questions comprised in the reference together with such an account of their reasons for those conclusions as in their opinion is expedient for facilitating a proper understanding of those questions and of their conclusions;
  - (b) where they conclude that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, shall specify in the report the effects adverse to the public interest which those matters have or may be expected to have; and
  - (c) where they conclude that any adverse effects so specified could be remedied or prevented by modifications of the relevant conditions, shall specify in the report modifications by which those effects could be remedied or prevented.
- (2) Where, on a reference under Article 15, the Monopolies Commission conclude that the licence holder or, as the case may be, any of the relevant licence holders is a party to an agreement to which the Restrictive Trade Practices Act 1976 applies, the Commission, in making their report on that reference, shall exclude from their consideration the question whether the provisions of that agreement, in so far as they are provisions by virtue of which it is an agreement to which that Act applies, operate, or may be expected to operate, against the public interest; and paragraph (1)(b) shall have effect subject to the provisions of this paragraph.
- (3) Section 82 of the 1973 Act (general provisions as to reports) shall apply in relation to reports of the Monopolies Commission on references under Article 15 as it applies to reports of the Commission under that Act.
- (4) A report of the Monopolies Commission on a reference under Article 15 shall be made to the Director.
- (5) Subject to paragraph (7), the Director shall—
- (a) on receiving a report on a reference under Article 15(1), send a copy of it to the licence holder and to the Department; and
  - (b) not less than 14 days from the day on which the Department receives that copy, publish the report in such manner as he considers appropriate for bringing the report to the attention of persons likely to be affected by it.
- (6) Subject to paragraph (7), the Director shall—
- (a) on receiving a report on a reference under Article 15(2), send a copy of it to the Department; and
  - (b) not less than 14 days from the day on which the Department receives that copy—
    - (i) send another copy to each relevant licence holder; and

- (ii) not less than 24 hours after complying with head (i), publish the report in such manner as he considers appropriate for bringing the report to the attention of persons likely to be affected by it.

(7) If it appears to the Department that the publication of any matter in such a report would be against the public interest or the commercial interests of any person, the Department may, before the end of the period of 14 days mentioned in paragraph (5)(b) or (6)(b), direct the Director to exclude that matter from every copy of the report to be published or (as the case may be) sent and published under that sub-paragraph.

### **Modification following report**

**17.—**(1) Where a report of the Monopolies Commission on a reference under Article 15—

- (a) includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest;
- (b) specifies effects adverse to the public interest which those matters have or may be expected to have;
- (c) includes conclusions to the effect that those effects could be remedied or prevented by modifications of the relevant conditions; and
- (d) specifies modifications by which those effects could be remedied or prevented,

the Director shall, subject to the following provisions of this Article, make such modifications of the relevant conditions as appear to him requisite for the purpose of remedying or preventing the adverse effects specified in the report.

(2) Where at any time the Director modifies under paragraph (1) the standard conditions of licences under sub-paragraph (a), (b) or (c) of Article 8(1), he—

- (a) shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences under that sub-paragraph granted after that time; and
- (b) may make such incidental or consequential modifications as he considers necessary or expedient of any conditions of licences under that sub-paragraph granted before that time,

and the above reference to paragraph (1) is a reference to that paragraph as it applies in relation to a report on a reference under Article 15(2).

(3) Before making modifications under this Article, the Director shall have regard to the modifications specified in the report.

(4) Before making modifications under this Article, the Director shall give notice—

- (a) stating that he proposes to make the modifications and setting out their effect;
- (b) stating the reasons why he proposes to make the modifications; and
- (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(5) A notice under paragraph (4) shall be given—

- (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the making of the modifications; and
- (b) by serving a copy of the notice on the licence holder or, as the case may be, the relevant licence holders.

(6) Where at any time the Director modifies standard conditions under paragraph (2)(a) for the purposes of their incorporation in licences under sub-paragraph (a), (b) or (c) of Article 8(1) granted after that time, he shall publish the modifications in such manner as he considers appropriate.

### **Modification by order under other statutory provisions**

**18.—**(1) Where in the circumstances mentioned in paragraph (3) the Secretary of State by order exercises any of the powers specified in—

- (a) Parts I and II of Schedule 8 to the 1973 Act; or
- (b) section 10(2)(a) of the 1980 Act,

the order may also provide for the modification of—

- (i) the conditions of a particular licence; or
- (ii) the standard conditions of licences under sub-paragraph (a), (b) or (c) of Article 8(1),

to such extent as may appear to him to be requisite or expedient for the purpose of giving effect to or of taking account of any provision made by the order.

(2) Where at any time the Secretary of State modifies under paragraph (1)(ii) the standard conditions of licences under sub-paragraph (a), (b) or (c) of Article 8(1), he—

- (a) shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences under that sub-paragraph granted after that time; and
- (b) may, after consultation with the Director, make such incidental or consequential modifications as he considers necessary or expedient of any conditions of licences under that sub-paragraph granted before that time.

(3) Paragraph (1) shall have effect where—

- (a) the circumstances are as mentioned in section 56(1) of the 1973 Act (order on report on monopoly reference) and the monopoly situation exists in relation to the carrying on of activities authorised or required by a licence;
- (b) the circumstances are as mentioned in section 73(1) of that Act (order on report on merger reference) and at least one of the two or more enterprises which ceased, or (in the application of that provision as it has effect by virtue of section 75(4)(e) of that Act) which would cease, to be distinct enterprises was or, as the case may be, is engaged in the carrying on of activities authorised or required by a licence; or
- (c) the circumstances are as mentioned in section 10(1) of the 1980 Act (order on report on competition reference) and the anti-competitive practice relates to the carrying on of activities authorised or required by a licence.

(4) Where at any time the Secretary of State modifies standard conditions under paragraph (2)(a) for the purposes of their incorporation in licences under sub-paragraph (a), (b) or (c) of Article 8(1) granted after that time, he shall publish the modifications in such manner as he considers appropriate.

(5) In this Article expressions which are also used in the 1973 Act or the 1980 Act have the same meanings as in that Act.

### *Enforcement of preceding provisions*

### **Orders for securing compliance**

**19.—**(1) Subject to paragraphs (2) and (5) and Article 20, where the Director is satisfied that a licence holder is contravening, or is likely to contravene, any relevant condition, he shall by a final order make such provision as is requisite for the purpose of securing compliance with that condition.

(2) Subject to paragraph (5), where it appears to the Director—

- (a) that a licence holder is contravening, or is likely to contravene, any relevant condition; and
- (b) that it is requisite that a provisional order be made,

he shall (instead of taking steps towards the making of a final order) by a provisional order make such provision as appears to him requisite for the purpose of securing compliance with that condition.

(3) In determining for the purposes of paragraph (2)(b) whether it is requisite that a provisional order be made, the Director shall have regard, in particular—

- (a) to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of the relevant condition, is likely to be done, or omitted to be done, before a final order may be made; and
- (b) to the fact that the effect of the provisions of this Article and Article 21 is to exclude the availability of any remedy (apart from under those provisions or for negligence) in respect of any contravention of a relevant condition.

(4) Subject to paragraph (5) and Article 20, the Director shall confirm a provisional order, with or without modifications, if—

- (a) he is satisfied that the licence holder to whom the order relates is contravening, or is likely to contravene, any relevant condition; and
- (b) the provision made by the order (with any modifications) is requisite for the purpose of securing compliance with that condition.

(5) The Director shall not make a final order or make or confirm a provisional order in relation to a licence holder if he is satisfied—

- (a) that the duties imposed on him by Article 5 preclude the making or, as the case may be, the confirmation of the order;
- (b) that the licence holder has agreed to take and is taking all such steps as it appears to the Director for the time being to be appropriate for the licence holder to take for the purpose of securing or facilitating compliance with the condition in question; or
- (c) that the contraventions were, or the apprehended contraventions are, of a trivial nature.

(6) Where the Director is satisfied as mentioned in paragraph (5), he shall—

- (a) serve notice that he is so satisfied on the licence holder; and
- (b) publish the notice in such manner as he considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.

(7) A final or provisional order—

- (a) shall require the licence holder to whom it relates (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified;
- (b) shall take effect at such time, being the earliest practicable time, as is determined by or under the order; and
- (c) may be revoked at any time by the Director.

(8) Without prejudice to the generality of the power conferred by paragraph (1), the provision that may be made in a final order includes, in particular, the imposition by the Director on the licence holder to whom the order relates of a requirement to pay to the Director a monetary penalty of such amount as may be appropriate, in all the circumstances of the case, in respect of the contravention in question.

(9) In this Article and the following provisions of this Part—

“final order”, means an order under this Article, other than a provisional order;

“provisional order” means an order under this Article which, if not previously confirmed under paragraph (4), will cease to have effect at the end of such period (not exceeding 3 months) as is determined by or under the order;

“relevant condition”, in relation to a licence holder, means any condition of his licence.

(10) Any sums received by the Director by way of monetary penalty under this Article shall be paid into the Consolidated Fund.

### **Procedural requirements**

**20.**—(1) Before he makes a final order or confirms a provisional order, the Director shall give notice—

- (a) stating that he proposes to make or confirm the order and setting out its effect;
- (b) setting out—
  - (i) the relevant condition for the purpose of securing compliance with which the order is to be made or confirmed;
  - (ii) the acts or omissions which, in his opinion, constitute or would constitute contraventions of that condition; and
  - (iii) the other facts which, in his opinion, justify the making or confirmation of the order; and
- (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed order or proposed confirmation may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(2) A notice under paragraph (1) shall be given—

- (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
- (b) by serving a copy of the notice, and a copy of the proposed order or of the order proposed to be confirmed, on the licence holder to whom the order relates.

(3) The Director shall not make a final order with modifications, or confirm a provisional order with modifications, except—

- (a) with the consent to the modifications of the licence holder to whom the order relates; or
- (b) after complying with the requirements of paragraph (4).

(4) The requirements mentioned in paragraph (3) are that the Director shall—

- (a) serve on the licence holder to whom the order relates such notice as appears to him requisite of his proposal to make or confirm the order with modifications;
- (b) in that notice specify the period (not being less than 28 days from the date of the service of the notice) within which representations or objections with respect to the proposed modifications may be made; and
- (c) consider any representations or objections which are duly made and not withdrawn.

(5) As soon as practicable after making a final order or making or confirming a provisional order, the Director shall—

- (a) serve a copy of the order on the licence holder to whom the order relates; and



- (b) publish the order in such manner as he considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.
  - (6) Before revoking a final order or a provisional order which has been confirmed, the Director shall give notice—
    - (a) stating that he proposes to revoke the order and setting out its effect; and
    - (b) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed revocation may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (7) If, after giving a notice under paragraph (6), the Director decides not to revoke the order to which the notice relates, he shall give notice of his decision.
  - (8) A notice under paragraph (6) or (7) shall be given—
    - (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
    - (b) by serving a copy of the notice on the licence holder to whom the order relates.

### **Validity and effect of orders**

- 21.—**(1) If the licence holder to whom a final or provisional order relates is aggrieved by the order and desires to question its validity on the ground—
- (a) that its making or confirmation was not within the powers of Article 19; or
  - (b) that any of the requirements of Article 20 have not been complied with in relation to it,
- he may, within 42 days from the date of service on him of a copy of the order, make an application to the High Court under this Article.
- (2) On any such application the High Court, if satisfied that the making or confirmation of the order was not within those powers or that the interests of the licence holder have been substantially prejudiced by a failure to comply with those requirements—
    - (a) may quash the order or any provision of the order; or
    - (b) if and to the extent that the application related to so much of an order as imposes a monetary penalty, may substitute a monetary penalty of such lesser amount as the High Court considers appropriate in all the circumstances of the case.
  - (3) Except as provided by this Article, the validity of a final or provisional order shall not be questioned by any legal proceedings whatever.
  - (4) The obligation to comply with a final or provisional order shall be a duty owed to any person who may be affected by a contravention of the order. P
  - (5) Where a duty is owed under paragraph (4) to any person, any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit of that person.
  - (6) In any proceedings brought against a licence holder under paragraph (5), it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the order.
  - (7) Without prejudice to any right which any person may have under paragraph (5) to bring civil proceedings in respect of any contravention or apprehended contravention of a final or provisional order, compliance with any such order shall be enforceable by civil proceedings by the Director for an injunction or for any other appropriate relief.

## Meters

### Meter testing and stamping

**22.**—(1) No meter shall be used for the purpose of ascertaining the quantity of gas supplied to any person unless it is stamped either by, or on the authority of, a meter examiner appointed under this Article or in such other manner as may be authorised by regulations.

(2) Subject to paragraphs (3) to (5), it shall be the duty of a meter examiner who is a member of the Director's staff, on being required to do so by any person and on payment of the prescribed fee, to examine any meter used or intended to be used for ascertaining the quantity of gas supplied to any person, and to stamp, or authorise the stamping of, that meter.

(3) A meter examiner shall not stamp, or authorise the stamping of, any meter unless he is satisfied that it is of such pattern and construction and is marked in such manner as is approved by the Director and that the meter conforms with such standards as may be prescribed.

(4) A meter examiner may stamp or authorise another person to stamp a meter, notwithstanding that he has not himself examined it, if—

- (a) the meter was manufactured or repaired by the person submitting it to the examiner;
- (b) that person has obtained the consent of the Director to his submission; and
- (c) any conditions subject to which the consent was given have been satisfied.

(5) A meter examiner may authorise another person to stamp a meter, notwithstanding that he himself has not examined it, if—

- (a) the meter was manufactured or repaired by that person;
- (b) that person has obtained the consent of the Director to his stamping of the meter; and
- (c) any conditions subject to which the consent was given have been satisfied.

(6) Regulations may make provision—

- (a) for re-examining meters already stamped, and for the cancellation of stamps in the case of meters which no longer conform with the prescribed standards and in such other circumstances as may be prescribed;
- (b) for requiring meters to be periodically overhauled;
- (c) for the revocation of any approval given by the Director to any particular pattern or construction of meter, and for requiring existing meters of that pattern or construction to be replaced within such period as may be prescribed; and
- (d) for the expenses of any such re-examination, overhaul or replacement of a meter to be defrayed in such manner as may be prescribed.

(7) All fees payable to meter examiners who are members of the Director's staff for the performance of functions conferred by or under this Article shall be paid to the Director; and any sums received by him under this paragraph shall be paid into the Consolidated Fund.

(8) The fees to be paid to meter examiners who are members of the Director's staff for the performance of functions conferred by or under this Article, and the persons by whom they are to be paid, shall be such as may be prescribed.

(9) The Director shall appoint competent and impartial persons as meter examiners for the purposes of this Article.

(10) If any person—

- (a) supplies gas through a meter which has not been stamped under this Article; or
- (b) uses, for ascertaining the quantity of gas supplied to any person or premises, a meter which has not been stamped under this Article,

he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(11) Where the commission by any person of an offence under paragraph (10) is due to the act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(12) In any proceedings for an offence under paragraph (10) it shall be a defence for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(13) Regulations may exempt meters of a prescribed class or description from provisions of this Article.

(14) In this Article “regulations” means regulations made by the Director.

#### *Consumer protection: miscellaneous*

### **Functions with respect to competition**

**23.**—(1) If and to the extent that he is requested by the Director General of Fair Trading to do so, it shall be the duty of the Director to exercise the functions of that Director under Part III of the 1973 Act (additional functions of Director for protection of consumers) so far as relating to courses of conduct which are or may be detrimental to the interests of consumers of gas, whether those interests are economic or interests in respect of health, safety or other matters; and references in that Part to that Director shall be construed accordingly.

(2) There are hereby transferred to the Director (so as to be exercisable concurrently with the Director General of Fair Trading)—

- (a) the functions of that Director under sections 44 (power to require information) and 45 (information with respect to complex monopoly situations) of the 1973 Act;
- (b) the functions of that Director under sections 50, 52 and 53 (monopoly references) and 86 and 88 (reports of Monopolies Commission) of that Act; and
- (c) the functions of that Director under sections 56A to 56G of that Act,

so far as relating to monopoly situations which exist or may exist in relation to commercial activities connected with the conveyance, storage or supply of gas; and references in Part IV and sections 86, 88 and 133 of that Act to that Director shall be construed accordingly.

(3) There are hereby transferred to the Director (so as to be exercisable concurrently with the Director General of Fair Trading) the functions of that Director under sections 2 to 10 (investigation of anti-competitive practice and competition references to Monopolies Commission) and 16 (reports of Monopolies Commission) of the 1980 Act so far as relating to courses of conduct which have or are intended to have or are likely to have the effect of restricting, distorting, or preventing competition in connection with the conveyance, storage or supply of gas; and references in those sections and in section 19 of that Act (restriction on disclosure of information) to that Director shall be construed accordingly.

(4) Before either Director first exercises in relation to any matter functions transferred by any of the following provisions, namely—

- (a) paragraph (2)(a);
- (b) paragraph (2)(b);
- (c) paragraph (2)(c); and
- (d) paragraph (3),

he shall consult the other Director; and neither Director shall exercise in relation to any matter functions transferred by any of those provisions if functions transferred by that provision have been exercised in relation to that matter by the other Director.

(5) It shall be the duty of the Director, for the purpose of assisting the Monopolies Commission in carrying out an investigation on a reference made to them by the Director by virtue of paragraph (2) or (3), to give to the Commission—

- (a) any information which is in his possession and which relates to matters falling within the scope of the investigation and—
  - (i) is requested by the Commission for that purpose; or
  - (ii) is information which in his opinion it would be appropriate for that purpose to give to the Commission without any such request; and
- (b) any other assistance which the Commission may require and which it is within his power to give, in relation to any such matters,

and the Commission shall, for the purposes of carrying out any such investigation, take into account any information given to them for that purpose under this paragraph.

(6) If any question arises as to whether paragraph (2) or (3) applies to any particular case, that question shall be referred to and determined by the Department; and no objection shall be taken to anything done under—

- (a) Part IV or section 86 or 88 of the 1973 Act (reports of Monopolies Commission); or
- (b) sections 2 to 10 of the 1980 Act (investigation of anti-competitive practice and competition references to Monopolies Commission),

by or in relation to the Director on the ground that it should have been done by or in relation to the Director General of Fair Trading.

(7) Section 93B of the 1973 Act (offences of supplying false or misleading information to the Secretary of State, the Director General of Fair Trading or the Monopolies Commission in connection with their functions under Parts IV, V, VI or VIII of the 1973 Act or under the 1980 Act) shall have effect, so far as relating to functions exercisable by the Director by virtue of paragraph (2) or (3), as if the reference in subsection (1)(a) of that section to the Director of Fair Trading included a reference to the Director.

(8) In this Article expressions which are also used in the 1973 Act or the 1980 Act have the same meanings as in that Act.

(9) References in this Part to functions of the Director under this Part include references to functions transferred to the Director by paragraph (2) or (3).

### **Fixing of maximum charges for reselling gas**

**24.—**(1) This Article applies to gas supplied to a consumer's premises by an authorised gas supplier, that is to say, a person who is authorised by a licence or exemption to supply gas to those premises.

(2) The Director shall from time to time direct that the maximum prices at which gas to which this Article applies may be resold—

- (a) shall be such as may be specified in the direction; or
- (b) shall be calculated by such method and by reference to such matters as may be so specified,

and shall publish directions under this Article in such manner as in his opinion will secure adequate publicity for them.

(3) A direction under this Article may—

- (a) require any person who resells gas to which this Article applies to furnish the purchaser with such information as may be specified or described in the direction; and
  - (b) provide that, in the event of his failing to do so, the maximum price applicable to the resale shall be such as may be specified in the direction or shall be reduced by such amount or such percentage as may be so specified.
- (4) Different directions may be given under this Article in different classes of cases, which may be defined by reference to areas, tariffs applicable to gas supplied by the authorised gas suppliers or any other relevant circumstances.
- (5) If any person resells gas to which this Article applies at a price exceeding the maximum price determined by or under a direction under this Article and applicable to the resale—
- (a) the amount of the excess; and
  - (b) if the direction so provides, interest on that amount at a rate specified or described in the direction,
- shall be recoverable by the purchaser.
- (6) Nothing in this Article shall apply in relation to the resale of gas for use in a motor vehicle which is constructed or adapted to use gas as fuel for its propulsion.

#### *Investigation of complaints*

#### **Investigation of enforcement matters**

- 25.**—(1) Subject to paragraph (2), it shall be the duty of the Director to investigate any matter which appears to him to be an enforcement matter and which—
- (a) is the subject of a representation (other than one appearing to the Director to be frivolous) made to the Director by or on behalf of a person appearing to the Director to have an interest in that matter; or
  - (b) is referred to him by the General Consumer Council under paragraph (3).
- (2) The Director may, if he thinks fit, require the General Consumer Council to investigate and report to him on any matter falling within paragraph (1).
- (3) It shall be the duty of the General Consumer Council to refer to the Director any matter which—
- (a) appears to the Council to be an enforcement matter; and
  - (b) is the subject of a representation (other than one appearing to the Council to be frivolous) made to the Council by or on behalf of a person appearing to the Council to have an interest in the matter.
- (4) In this Article and Article 26 “enforcement matter” means any matter in respect of which any functions of the Director under Article 19 are or may be exercisable.

#### **Investigation of certain other matters**

- 26.**—(1) It shall be, the duty of the General Consumer Council to investigate any matter which appears to the Council to be a relevant matter and which—
- (a) is the subject of a representation (other than one appearing to the Council to be frivolous) made to the Council by or on behalf of a person (other than the holder of a licence or exemption) appearing to the Council to have an interest in that matter; or
  - (b) is referred to the Council by the Director under paragraph (2).

(2) Subject to paragraph (3), it shall be the duty of the Director to refer to the General Consumer Council any matter which—

- (a) appears to the Director to be a relevant matter; and
- (b) is the subject of a representation (other than one appearing to the Director to be frivolous) made to the Director by or on behalf of a person (other than the holder of a licence or exemption) appearing to the Director to have an interest in that matter.

(3) Nothing in paragraph (2) shall require the Director to refer to the General Consumer Council any matter in respect of which he is considering exercising functions under this Part.

(4) Where on an investigation under paragraph (1) any matter appears to the General Consumer Council to be a matter in respect of which it would be appropriate for the Director to exercise any functions under this Part, the Council shall refer that matter to the Director with a view to his exercising those functions with respect to that matter.

(5) In this Article “relevant matter”, in relation to the General Consumer Council, means any matter (other than an enforcement matter)—

- (a) in respect of which any functions of the Director under this Part are or may be exercisable; and
- (b) which relates to the holder of a licence or exemption.

#### *Other functions of Director*

### **General functions**

**27.**—(1) It shall be the duty of the Director, so far as it appears to him practicable to do so—

- (a) to keep under review the carrying on both in Northern Ireland and elsewhere of activities connected with the conveyance, storage and supply of gas; and
- (b) to collect information with respect to those activities, and the persons by whom they are carried on, with a view to facilitating the exercise of his functions under this Part.

(2) The Department may give general directions indicating—

- (a) considerations to which the Director should have particular regard in determining the order of priority in which matters are to be brought under review in performing his duty under paragraph (1)(a) or (b); and
- (b) considerations to which, in cases where it appears to the Director that any of his functions under this Part are exercisable, he should have particular regard in determining whether to exercise those functions.

(3) It shall be the duty of the Director, where either he considers it expedient or he is requested by the Department or the Director General of Fair Trading to do so, to give information, advice and assistance to the Department or that Director with respect to any matter in respect of which any function of the Director or the Department under this Part is exercisable.

(4) It shall be the duty of the Director to make such arrangements as he considers appropriate for the provision of information by him to the General Consumer Council.

### **Publication of information and advice**

**28.**—(1) The Director shall arrange for the publication, in such form and in such manner as he considers appropriate, of such information and advice as it appears to him expedient to give to customers or potential customers of licence holders.

(2) In arranging for the publication of any such information or advice the Director 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 Director, 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 Director, seriously and prejudicially affect the interests of that body.
- (3) The Director General of Fair Trading shall consult the Director before publishing under section 124 of the 1973 Act (publication of information and advice) any information or advice which may be published by the Director under this Article.

### **Keeping of register**

**29.**—(1) The Director shall, at such premises and in such form as he may determine, maintain a register for the purposes of this Part.

(2) Subject to paragraph (3) and to any direction given under paragraph (4), the Director shall cause to be entered in the register the provisions of—

- (a) every licence and every exemption granted to a particular person;
- (b) every modification or revocation of a licence and every revocation of an exemption;
- (c) every direction or consent given or determination made under a licence; and
- (d) every final or provisional order, every confirmation of a provisional order, every revocation of such an order and every notice under Article 19(6).

(3) In entering any provision in the register, the Director shall have regard to the need for excluding, so far as that is practicable, the matters specified in Article 28(2)(a) and (b).

(4) If it appears to the Department that the entry of any provision in the register would be against the public interest or the commercial interests of any person, the Department may direct the Director not to enter that provision in the register.

(5) The contents of the register shall be available for inspection by the public during such hours and subject to the payment of such fee as the Director may determine.

(6) Any person may, on the payment of such fee as the Director may determine, require the Director to supply him with a copy of, or extract from, any part of the register, being a copy or extract which is certified by the Director to be a true copy or extract.

(7) Any sums received by the Director under this Article shall be paid into the Consolidated Fund.

### **Power to require information, etc.**

**30.**—(1) Where it appears to the Director that a licence holder may be contravening, or may have contravened, any relevant condition, the Director may, for any purpose connected with such of his functions under Article 19 as are exercisable in relation to that matter, by notice signed by him—

- (a) require the person on whom it is served to produce, at a time and place specified in the notice, to the Director or to any person appointed by the Director for the purpose, any documents which are specified or described in the notice and are in that person's custody or under his control; or
- (b) require that person, if he is carrying on a business, to furnish, at a time and place and in the form and manner specified in the notice, to the Director such information as may be specified or described in the notice.

(2) Where a licence has been or is to be revoked, or has expired or is about to expire by effluxion of time, and it appears to the Director, having regard to the duties imposed by Article 5, to be requisite

or expedient to do so for any purpose connected with the revocation or expiry, the Director may, with the consent of the Department, by notice signed by him—

- (a) require the licence holder to produce, at a time and place specified in the notice, to the Director, or to any person so specified, any records which are specified or described in the notice and are in the licence holder's custody or under his control; or
- (b) require the licence holder to furnish to the Director, or to any person specified in the notice, such information as may be specified or described in the notice, and specify the time, the manner and the form in which such information is to be furnished.

(3) No person shall be required under this Article to produce any documents or records which he could not be compelled to produce in civil proceedings in the High Court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in any such proceedings.

(4) A person who without reasonable excuse fails to do anything required of him by notice under paragraph (1) or (2) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) A person who intentionally alters, suppresses or destroys any document or records which he has been required by any notice under paragraph (1) or (2) to produce shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(6) If a person makes default in complying with a notice under paragraph (1) or (2), the High Court may, on the application of the Director, make such order as the Court thinks fit for requiring the default to be made good; and any such order may provide that all the costs of and incidental to the application shall be borne by the person in default or by any officers of a company or other body or association who are responsible for its default.

### **Duty to consider representations and give reasons**

**31.—**(1) The Department may by order exercise any one or more of the powers conferred by paragraphs (2) to (4).

(2) This paragraph confers power to provide that, before the Director makes a specified decision in relation to a licence holder, the Director—

- (a) shall give to the licence holder a written notice stating—
  - (i) that he is considering making the decision and the reasons why he is considering doing so; and
  - (ii) that the licence holder may, within a period specified in the notice, make written representations to him or, if the licence holder so requests, make oral representations to a person appointed by him for the purpose; and
- (b) shall consider any representations which are duly made and not withdrawn.

(3) This paragraph confers power to provide that, where the Director makes a specified decision in relation to a licence holder, the Director shall as soon as practicable give to the licence holder a written notice explaining why it appeared to him to be appropriate to make the decision.

(4) This paragraph confers power to provide that, where a specified decision made or proposed to be made in relation to a licence holder will or may materially affect any specified person, any provision made by virtue of paragraph (2) or (3) shall, with any specified modifications, apply in relation to that person.



(5) Nothing in any order made under this Article shall require the Director to disclose any information the disclosure of which he considers would or might seriously and prejudicially affect the interests of a particular individual or body of persons, whether corporate or unincorporate.

(6) In this Article—

“decision” means any decision under this Part, or under a condition of a licence, other than a decision to make a provisional order under Article 19;

“specified”, in relation to an order under this Article, means specified in the order or of a description so specified;

and references to a licence holder include references to an applicant for a licence.

### **Annual and other reports**

**32.—**(1) The Director shall, as soon as practicable after the end of each calendar year—

(a) make to the Department a report on—

(i) his activities during that year; and

(ii) the Monopolies Commission’s activities during that year so far as relating to references made by him; and

(b) send a copy of that report to the chairman of the General Consumer Council.

(2) Every such report shall—

(a) include a general survey of developments, during the year to which it relates, in respect of matters falling within the scope of the Director’s functions;

(b) set out any final or provisional orders made, and provisional orders confirmed, by the Director during that year;

(c) set out any general directions given to the Director during that year under Article 27(2); and

(d) include a summary of any reports made to him during that year by the General Consumer Council under Article 34.

(3) The Department shall lay a copy of every report made by the Director under paragraph (1) before the Assembly and shall arrange for copies of every such report to be published in such manner as the Department considers appropriate.

(4) The Director shall also make to the Department—

(a) such reports with respect to the matters mentioned in paragraph (2)(a) as the Department may require; and

(b) such other reports with respect to those matters as may appear to him to be expedient;

and the Director shall, if the Department so directs, arrange for copies of any report made under this paragraph to be published in such manner as is specified in the direction.

(5) In making or preparing any report under this Article the Director shall have regard to the need for excluding, so far as that is practicable, the matters specified in Article 28(2)(a) and (b).

(6) Section 125(1) of the 1973 Act (annual and other reports) shall not apply to activities of the Monopolies Commission on which the Director is required to report by this Article.

### *Provisions with respect to the General Consumer Council*

### **General duty of the General Consumer Council to advise Director, etc.**

**33.—**(1) It shall be the duty of the General Consumer Council—

- (a) to make representations to and consult with holders of licences or exemptions about all such matters as appear to the Council to affect the interests of consumers of gas;
  - (b) to keep under review matters affecting the interests of consumers of gas; and
  - (c) to advise the Director on any matter affecting the interests of such consumers on which the Council considers it should offer advice or which is referred to the Council by the Director.
- (2) The Director may, to such extent as may be approved by the Department of Finance and Personnel, defray or contribute towards the expenses of the General Consumer Council in exercising functions under this Part.

### **Reports of the General Consumer Council**

- 34.**—(1) The General Consumer Council—
- (a) shall make a report to the Director on any such matter as he may require; and
  - (b) may make a report to the Director concerning any matter which appears to the Council to affect the interests of consumers of gas.
- (2) The General Consumer Council shall send to the Director a copy of every report prepared by it under paragraph 12(1) of Schedule 1 to the General Consumer Council (Northern Ireland) Order 1984 (annual report of Council).

### *Major pipe-lines, gas storage facilities and gas processing facilities*

### **Consent of Director for construction of major pipe-line**

- 35.**—(1) Any person who executes works for the construction of a major pipe-line—
- (a) without the consent of the Director granted under this Article; or
  - (b) otherwise than in accordance with the conditions subject to which the consent of the Director is granted under this Article,
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (2) For the purposes of this Article a major pipe-line is a pipe-line which when constructed—
- (a) will exceed 7 kilometres in length; and
  - (b) will have a design operating pressure exceeding 7 bar gauge.
- (3) The Director may by regulations amend the definition of major pipe-line in paragraph (2).
- (4) An application for the consent of the Director under this Article shall—
- (a) specify the points between which the proposed pipe-line is to run and be accompanied by a map on which is delineated the route which it is proposed to take;
  - (b) specify the length, diameter and capacity of the proposed pipe-line;
  - (c) be in such form, contain such other information and be accompanied by such fee as may be prescribed by regulations made by the Director.
- (5) An applicant for a consent under this Article shall provide the Director with such other information relevant to the application as the Director may require.
- (6) As soon as practicable after making an application for a consent under this Article, the applicant shall publish notice of that fact in such manner as the Director may require and such notice shall—

- (a) name a place where a copy of the application (and the map accompanying it) may be inspected free of charge, and copies thereof may be obtained on payment of a reasonable charge, at all reasonable hours; and
    - (b) specify a time within which representations concerning the application may be made to the Director.
  - (7) After considering any such representations duly made to him, the Director may grant consent under this Article to the applicant or may refuse such consent.
  - (8) A consent granted under this Article—
    - (a) shall remain in force for such period as may be specified in or determined under the consent; and
    - (b) may be granted subject to such conditions (to be specified therein) as the Director thinks fit.
  - (9) Without prejudice to the generality of paragraph (8)(b), a consent under this Article may be granted subject to conditions—
    - (a) as to the route which the pipe-line is to take (subject to such limits of lateral deviation as may be specified);
    - (b) as to the ownership and operation of the pipe-line;
    - (c) requiring works for the construction of the pipe-line to be substantially commenced within a specified period;
    - (d) requiring the pipe-line, or any specified length of it, to be so constructed as to be capable of conveying specified quantities of gas.
  - (10) Paragraph (11) applies where—
    - (a) representations concerning an application are duly made to the Director under paragraph (6); and
    - (b) a consent granted in pursuance of that application indicates that specified conditions are, or are to a specified extent, attributable solely to such representations;
- and references in paragraphs (11) and (12) to “additional conditions” are references to conditions specified under sub-paragraph (b) or (as the case may be) to such conditions to the extent so specified.
- (11) Where this paragraph applies, the consent—
    - (a) shall specify the sums or the method of determining the sums which the Director considers should be paid to the applicant by such of the persons who made representations to the Director as are specified, for the purpose of defraying so much of the cost of constructing the pipe-line as is attributable to the additional conditions;
    - (b) shall specify the arrangements which the Director considers should be made by each of those persons, within a specified period, for the purpose of securing that those sums will be paid to the applicant if he constructs the pipe-line in accordance with the additional conditions.
  - (12) Where it appears to the Director that arrangements specified under paragraph (11)(b) have not been made by any person within the period so specified, the Director may amend the consent so as to eliminate the additional conditions so far as attributable to the representations made by that person.
  - (13) In paragraphs (9) to (12) “specified” means specified in the consent.
  - (14) Sums received by the Director under this Article shall be paid into the Consolidated Fund.

**Increase of capacity, etc. of pipe-line**

**36.**—(1) If in the case of a pipe-line operated by a person holding a licence under Article 8(1) (a) (“the operator”) it appears to the Director, on the application of a person other than the operator, that the pipe-line can and should be modified—

- (a) by installing in it a junction through which another pipe-line may be connected to it; or
- (b) by modifying apparatus and works associated with a high pressure pipe-line so as to increase the capacity of the pipe-line,

then, subject to paragraph (3), the Director may, after giving to the operator an opportunity of being heard about the matter, give directions to the operator in accordance with paragraph (2) in consequence of the application.

(2) Directions under paragraph (1) may—

- (a) specify the modifications which the Director considers should be made in consequence of the application;
- (b) specify the sums or the methods of determining the sums which the Director considers should be paid to the operator by the applicant for the purpose of defraying the cost of the modifications;
- (c) specify the arrangements which the Director considers should be made by the applicant, within a period specified in the directions, for the purpose of securing that those sums will be paid to the operator if he carries out the modifications;
- (d) require the operator, if the applicant makes those arrangements within the period specified under sub-paragraph (c), to carry out the modifications within a period specified in the directions.

(3) Where the Director proposes to give directions under paragraph (1), it shall be his duty before doing so to give to the applicant particulars of the modifications which he proposes to specify in the directions.

(4) The obligation to comply with any directions under paragraph (1) is a duty owed to any person who may be affected by a contravention of them.

(5) Where a duty is owed by virtue of paragraph (4) to any person, any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit or instance of that person.

(6) In any proceedings brought against any person in pursuance of paragraph (5), it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the directions in question.

(7) Without prejudice to any right which any person may have by virtue of paragraph (5) to bring civil proceedings in respect of any contravention or apprehended contravention of any directions under paragraph (1), compliance with any such directions shall be enforceable by civil proceedings by the Director for an injunction or for any other appropriate relief.

(8) In this Article “high pressure pipe-line” means any pipe-line which—

- (a) has a design operating pressure exceeding 7 bar gauge; or
- (b) is of a class specified by order made by the Department.

**Consent of Director for construction of gas storage facility**

**37.**—(1) Any person who executes works for the construction of a gas storage facility—

- (a) without the consent of the Director granted under this Article; or
- (b) otherwise than in accordance with the conditions subject to which the consent of the Director is granted under this Article,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) For the purposes of this Article the execution of works in land for the purpose of determining whether or not it is suitable as the location of a gas storage facility and the carrying out of surveying operations for that purpose shall be deemed not to constitute the execution of works for the construction of a gas storage facility.

(3) An application for the consent of the Director under this Article shall—

- (a) specify the location and capacity of the proposed gas storage facility;
- (b) be in such form, contain such other information and be accompanied by such fee as may be prescribed by regulations made by the Director.

(4) An applicant for a consent under this Article shall provide the Director with such other information relevant to the application as the Director may require.

(5) As soon as practicable after making an application for a consent under this Article, the applicant shall publish notice of that fact in such manner as the Director may require and such notice shall—

- (a) name a place where a copy of the application may be inspected free of charge, and copies thereof may be obtained on payment of a reasonable charge, at all reasonable hours; and
- (b) specify a time within which representations concerning the application may be made to the Director.

(6) After considering any such representations duly made to him, the Director may grant consent under this Article to the applicant or may refuse such consent.

(7) A consent granted under this Article—

- (a) shall remain in force for such period as may be specified in or determined under the consent; and
- (b) may be granted subject to such conditions (to be specified therein) as the Director thinks fit.

(8) Without prejudice to the generality of paragraph (7)(b), a consent under this Article may be granted subject to conditions—

- (a) as to the ownership and operation of the gas storage facility;
- (b) requiring works for the construction of the facility to be substantially commenced within a specified period;
- (c) requiring the facility to be so constructed as to be capable of storing specified quantities of gas.

(9) Paragraph (10) applies where—

- (a) representations concerning an application are duly made to the Director under paragraph (5); and
- (b) a consent granted in pursuance of that application indicates that specified conditions are, or are to a specified extent, attributable solely to such representations;

and references in paragraphs (10) and (11) to “additional conditions” are references to conditions specified under sub-paragraph (b) or (as the case may be) to such conditions to the extent so specified.

(10) Where this paragraph applies, the consent—

- (a) shall specify the sums or the method of determining the sums which the Director considers should be paid to the applicant by such of the persons who made representations to the Director as are specified, for the purpose of defraying so much of the cost of constructing the gas storage facility as is attributable to the additional conditions;

- (b) shall specify the arrangements which the Director considers should be made by each of those persons, within a specified period, for the purpose of securing that those sums will be paid to the applicant if he constructs the gas storage facility in accordance with the additional conditions.

(11) Where it appears to the Director that arrangements specified under paragraph (10)(b) have not been made by any person within the period so specified, the Director may amend the consent so as to eliminate the additional conditions so far as attributable to the representations made by that person.

(12) In paragraphs (8) to (11) “specified” means specified in the consent.

(13) Sums received by the Director under this Article shall be paid into the Consolidated Fund.

### **Increase of capacity of gas storage facility**

**38.**—(1) If in the case of a gas storage facility operated by a person holding a licence under Article 8(1)(b) (“the operator”) it appears to the Director, on the application of a person other than the operator, that the gas storage facility can and should be modified to increase the capacity of that facility, then, subject to paragraph (2), the Director may, after giving to the operator an opportunity of being heard about the matter, give directions to the operator in consequence of the application.

(2) Paragraphs (2) to (7) of Article 36 apply in relation to directions under paragraph (1) of this Article as they apply in relation to directions under paragraph (1) of that Article.

### **Acquisition of rights to use gas processing facilities**

**39.**—(1) In the case of any gas processing facility operated otherwise than by the holder of a licence under Article 8(1)(a), any person may, after giving the owner of the facility not less than 28 days' notice, apply to the Department for directions under this Article which would secure to the applicant a right to have processed by the facility, during a period specified in the application, quantities so specified of gas which—

- (a) is of a kind so specified; and
- (b) is of, or of a kind similar to, the kind which the facility is designed to process.

(2) Where an application is made under paragraph (1), it shall be the duty of the Department—

- (a) to decide whether the application is to be adjourned (so as to enable negotiations or further negotiations to take place), considered further or rejected;
- (b) to give notice of its decision to the applicant; and
- (c) in the case of a decision that the application is to be considered further, to give to the owner of the facility and to any person who has a right to have gas processed by the facility notice that the application is to be so considered and an opportunity of being heard about the matter.

(3) Where, after further considering an application under paragraph (1), the Department is satisfied that the giving of directions under this Article would not prejudice the efficient operation of the facility, or the processing by the facility of—

- (a) the quantities of gas which the owner of the facility or any associate of the owner requires or may reasonably be expected to require to be processed by the facility for the purposes of any business carried on by him; and
- (b) the quantities of gas which any person who is not such an associate and has a right to have gas processed by the facility is entitled to require to be so processed in the exercise of that right,

the Department may give such directions to the owner of the facility.

(4) Directions under this Article may—

- (a) specify the terms on which the Department considers the owner of the facility should enter into an agreement with the applicant for all or any of the following purposes—
  - (i) for securing to the applicant the right to have processed by the facility, during the period specified in the directions and in the quantities so specified, gas which is of a kind so specified;
  - (ii) for securing that the exercise of that right is not prevented or impeded;
  - (iii) for regulating the charges which may be made for the processing of gas by virtue of that right;
  - (iv) for securing to the applicant such ancillary or incidental rights as the Department considers necessary or expedient, which may include the right to have a pipe-line of his connected to the facility by the owner;
- (b) specify the sums or the method of determining the sums which the Department considers should be paid by way of consideration for any such right; and
- (c) require the owner, if the applicant pays or agrees to pay those sums within a period specified in that behalf in the directions, to enter into an agreement with him on the terms so specified.

(5) Paragraphs (4) to (7) of Article 36 apply in relation to directions under this Article as they apply in relation to directions under paragraph (1) of that Article, but with the substitution in paragraph (7) of a reference to the Department for the reference to the Director.

(6) In this Article—

“gas processing facility” means any facility which carries out gas processing operations;

“gas processing operation” means any of the following operations, namely—

- (a) purifying, blending, odourising or compressing gas for the purpose of enabling it to be introduced into a pipe-line system operated by the holder of a licence under Article 8(1) (a) or to be conveyed to an electricity generating station, a gas storage facility or any place outside Northern Ireland;
- (b) removing from gas for that purpose any of its constituent gases, or separating from gas for that purpose any oil or water; and
- (c) determining the quantity or quality of gas which is or is to be so introduced, or so conveyed, whether generally or by or on behalf of a particular person,

and “process”, in relation to gas, shall be construed accordingly;

“owner”, in relation to a gas processing facility, includes a lessee and any person occupying or having control of the facility.

(7) For the purposes of this Article a person is an associate of the owner of a gas processing facility if—

- (a) both of them are companies; and
- (b) one of the companies has control of the other, or both are under the control of the same person or persons;

and subsections (2) to (5) of section 416 of the Income and Corporation Taxes Act 1988 shall apply for the purposes of sub-paragraph (b) as they apply for the purposes of Part XI of that Act.

*Miscellaneous***Directions for preserving security of gas supplies, etc.**

**40.**—(1) The Department may, after consultation with an authorised person, give to that person such directions of a general character as appear to the Department to be requisite or expedient for the purpose of—

- (a) preserving the security of buildings used for, or for purposes connected with, the conveyance, storage or supply of gas, or of gas plant; or
- (b) mitigating the effects of any civil emergency which may occur.

(2) If it appears to the Department to be requisite or expedient to do so for any such purpose as is mentioned in paragraph (1), the Department may, after consultation with an authorised person, give to that person a direction requiring him (according to the circumstances of the case) to do, or not to do, a particular thing specified in the direction.

(3) An authorised person shall give effect to any direction given to him by the Department under this Article notwithstanding any other duty imposed on him by or under this Order.

(4) A copy of every direction given under this Article shall be laid before the Assembly unless the Department is of the opinion that disclosure of the direction is against the interests of national security or the commercial interests of any person.

(5) A person shall not disclose, or be required under any statutory provision or otherwise to disclose, anything done by virtue of this Article if the Department has notified him that the Department is of the opinion that disclosure of that thing is against the interests of national security or the commercial interests of some other person.

(6) In this Article—

“authorised person” means the holder of a licence or exemption;

“civil emergency” means any natural disaster or other emergency which, in the opinion of the Department, is or may be likely to disrupt gas supplies.

**Exclusion of certain agreements from Restrictive Trade Practices Act 1976**

**41.**—(1) The Restrictive Trade Practices Act 1976 shall not apply to any agreement which—

- (a) contains provisions relating to, or to activities connected with—
  - (i) the introduction of gas into;
  - (ii) the taking of gas from; or
  - (iii) the use by any authorised person of,
    - a pipe-line system operated by the holder of a licence under Article 8(1)(a); and
- (b) is specified, or is of a description specified, in an order made by the Department and satisfies such conditions as may be so specified.

(2) Before making an order under paragraph (1) the Department shall consult the Director and the Director General of Fair Trading.

(3) The conditions specified in an order under paragraph (1) may include conditions which refer any matter (which may be the general question whether the Act of 1976 should apply to a particular agreement) to the Department for determination after such consultation as may be so specified.

(4) In this Article “authorised person” means the holder of a licence or exemption.



### **Disposal of assets of former gas undertaker to require consent of Department**

**42.**—(1) A former gas undertaker shall not, after the coming into operation of this Article, dispose of any assets to which this paragraph applies without the consent of the Department; and any purported disposal by a former gas undertaker of any such assets after the coming into operation of this Article shall be void.

(2) Paragraph (1) applies to assets which—

- (a) are vested in the former gas undertaker immediately before the coming into operation of this Article; and
- (b) subsist, either wholly or mainly, for the purposes of, or in connection with, or are otherwise attributable to, the functions exercised by the former gas undertaker in its capacity as such.

(3) In this Article “former gas undertaker” means a gas undertaker which has entered into an agreement with the Department under Article 3 of the Gas (Northern Ireland) Order 1985 for the run-down and closure of its gas undertaking.

(4) For the purposes of paragraph (1) a person disposes of any asset if (whether for valuable consideration or not)—

- (a) he transfers or assigns any interest in, or right in respect of, that asset to another person;
- (b) he grants to any other person any right of possession, occupation or use of that asset;
- (c) he mortgages or charges that asset or creates any other encumbrance in respect of it; or
- (d) he deals in any other way with that asset so as to transfer or assign to, or create for the benefit of, any other person any interest in, or right in respect of, the asset.

### **Transfer to licence holder of assets and liabilities of former gas undertaker**

**43.**—(1) The Department may, with the consent of a licence holder, make a scheme for the transfer to the licence holder of such assets and liabilities of a former gas undertaker as are specified in the scheme.

(2) In this Article—

“former gas undertaker” has the same meaning as in Article 42;

“transferred assets” means the assets transferred under this Article;

“transfer scheme” means a scheme under paragraph (1);

“transfer date”, in relation to any transfer of assets or liabilities under this Article, means the date specified in the transfer scheme as the date on which the transfer is to take effect;

and any reference to assets and liabilities of a former gas undertaker is a reference to assets and liabilities—

- (i) to which the former gas undertaker is entitled or subject immediately before the transfer date, whether or not capable of being transferred or assigned by it; and
- (ii) which subsist, either wholly or mainly, for the purposes of, or in connection with, or are otherwise attributable to, the functions exercised by the former gas undertaker in its capacity as such.

(3) Assets and liabilities transferred to a licence holder by a transfer scheme shall on the transfer date become assets and liabilities of the licence holder by virtue of this paragraph; and a certificate issued by the Department that any asset or liability specified in the certificate is by virtue of this paragraph vested in the licence holder shall be conclusive evidence for all purposes of that fact.

(4) A transfer scheme—

- (a) may specify the assets and liabilities to be transferred by describing or identifying them in such manner as the Department considers appropriate;

- (b) shall specify in relation to transferred assets the relevant period (being a period beginning on the transfer date) for the purposes of paragraph (5);
- (c) may provide for the payment by the licence holder to the Department in respect of the transfer of such sum or sums at such time or times as may be specified in, or determined by the Department in accordance with, the scheme;
- (d) may provide for the determination of any sum or sums payable to the Department under sub-paragraph (c) or paragraph (8);
- (e) may provide for the issue to the Department of securities of the licence holder for purposes connected with the scheme or its implementation;
- (f) may contain such supplementary, incidental and consequential provisions as the Department considers appropriate.

(5) A person (whether a licence holder or a successor in title) in whom any transferred assets are vested at any time during the relevant period specified under paragraph (4)(b) in relation to those assets shall not dispose of those assets before the end of that period without the consent of the Department; and any purported disposal by such a person of any such assets before the end of that period shall be void.

(6) Paragraph (4) of Article 42 applies for the purposes of paragraph (5) as it applies for the purposes of paragraph (1) of that Article.

(7) Paragraph (5) applies to assets which replace, extend or incorporate transferred assets as it applies to transferred assets; and a certificate issued by the Department that any assets do or do not fall within this paragraph shall be conclusive evidence for all purposes of this Article.

(8) A consent under paragraph (5) may be granted subject to such conditions as the Department considers appropriate, including conditions requiring the payment to the Department of such sum or sums at such time or times as may be determined by the Department in accordance with the scheme.

(9) Any sum payable to the Department under paragraph (4)(c) or (8) may be recovered by the Department in a court of competent jurisdiction as a civil debt due to it.

(10) Stamp duty shall not be chargeable on a transfer scheme or any transfer effected under this Article.

### **General restrictions on disclosure of information**

**44.—**(1) Subject to the following provisions of this Article, no information with respect to any particular business which—

- (a) has been obtained under any of the provisions of this Part; and
- (b) relates to the affairs of any individual or to any particular business,

shall, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.

(2) Paragraph (1) does not apply to any disclosure of information if —

- (a) the disclosure is required by a notice under paragraph (1) or (2) of Article 30;
- (b) the information has been obtained in pursuance of a notice under paragraph (2) of that Article; or
- (c) the disclosure is made by one licence holder to another and is required either by a condition of the disclosing licence holder's licence, or by the other licence holder for purposes connected with the carrying on of activities which he is authorised by his licence to carry on.

(3) Paragraph (1) does not apply to any disclosure of information which is made—

- (a) for the purpose of facilitating the carrying out by the Department, the Director or the Monopolies Commission of any functions under this Part;
  - (b) for the purpose of facilitating the carrying out by—
    - (i) any Minister of the Crown;
    - (ii) any Northern Ireland department;
    - (iii) the Director General, of Fair Trading;
    - (iv) the Monopolies Commission;
  - (v) the Comptroller and Auditor General for Northern Ireland;
    - (vi) the Director General of Telecommunications;
    - (vii) the Director General of Gas Supply; (viii) the Director General of Water Services;
    - (ix) the Director General of Electricity Supply;
    - (x) the Water Appeals Commission for Northern Ireland;
    - (xi) the Director General of Electricity Supply for Northern Ireland; or
    - (xii) the Civil Aviation Authority; of any functions under any of the statutory provisions specified in paragraph (4);
  - (c) for the purpose of enabling or assisting the Secretary of State to exercise any powers conferred on him by the Financial Services Act 1986 or by the statutory provisions relating to insurance companies;
  - (d) for the purpose of enabling or assisting the Department or the Department of Finance and Personnel to exercise any powers conferred on that Department by the statutory provisions relating to companies or insolvency or for the purpose of enabling or assisting any inspector appointed by the Department under the statutory provisions relating to companies to carry out his functions;
  - (e) for the purpose of enabling or assisting the official receiver for Northern Ireland to carry out his functions under the statutory provisions relating to insolvency or for the purpose of enabling or assisting a recognised professional body for the purposes of Article 350 of the Insolvency (Northern Ireland) Order 1989 to carry out its functions as such;
  - (f) for the purpose of facilitating the carrying out by the Health and Safety Agency of any of its functions under any statutory provision;
  - (g) for the purpose of facilitating the carrying out by any district council of its functions under the Consumer Protection Act 1987;
  - (h) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;
  - (i) for the purposes of any civil proceedings brought under this Part or any of the statutory provisions specified in paragraph (4); or
  - (j) in pursuance of a Community obligation.
- (4) The statutory provisions referred to in paragraph (3) are—
- (a) the Trade Descriptions Act 1968;
  - (b) the Water Act (Northern Ireland) 1972;
  - (c) the 1973 Act;
  - (d) the Water and Sewerage Services (Northern Ireland) Order 1973;
  - (e) the Consumer Credit Act 1974;
  - (f) the Restrictive Trade Practices Act 1976;

- (g) the Resale Prices Act 1976;
  - (h) the Estate Agents Act 1979;
  - (j) the 1980 Act;
  - (k) the Telecommunications Act 1984;
  - (l) the Airports Act 1986;
  - (m) the Gas Act 1986;
  - (n) the Audit (Northern Ireland) Order 1987;
  - (o) the Consumer Protection Act 1987;
  - (p) the Consumer Protection (Northern Ireland) Order 1987;
  - (q) the Electricity Act 1989;
  - (r) the Water Industry Act 1991;
  - (s) the Electricity (Northern Ireland) Order 1992;
  - (t) Part IV of the Airports (Northern Ireland) Order 1994;
  - (u) the Control of Misleading Advertisements Regulations 1988.
- (5) The Department may by order provide that any of paragraphs [SI 19881915](#). (2), (3) and (4) shall have effect subject to such modifications as are specified in the order.
- (6) Nothing in paragraph (1) shall be construed—
- (a) as limiting the matters which may be published under Article 28 or may be included in, or made public as part of, a report of the Director, the Monopolies Commission or the General Consumer Council under any provision of this Part; or
  - (b) as applying to any information which has been so published or has been made public as part of such a report.
- (7) Any person who discloses any information in contravention of this Article shall be guilty of an offence and shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

### **Directions restricting the use of certain information**

**45.**—(1) The Department may give to any person who is authorised by a licence to convey gas from one place to another (“the authorised person”) such directions as appear to the Department to be requisite or expedient for the purpose of securing that, in any case where paragraph (2) applies, neither the person by whom the information mentioned in that paragraph is acquired nor any other person obtains any unfair commercial advantage from his possession of the information.

(2) This paragraph applies where, in the course of any dealings with an outside person who is, or is an associate of, a person authorised by a licence or exemption to convey, store or supply gas, the authorised person or any associate of his is furnished with or otherwise acquires any information which relates to the affairs of that outside person or any associate of his.

(3) As soon as practicable after giving any directions under paragraph (1), the Department shall publish a copy of the directions in such manner as the Department considers appropriate for the purpose of bringing the directions to the attention of persons likely to be affected by a contravention of them.

(4) The obligation to comply with any directions under paragraph (1) is a duty owed to any person who may be affected by a contravention of them.

(5) Where a duty is owed under paragraph (4) to any person any breach of the duty which causes that person to sustain loss or damage shall be actionable-at the suit of that person.

(6) In any proceedings brought against any person under paragraph (S), it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the directions.

(7) Without prejudice to any right which any person may have by virtue of paragraph (5) to bring civil proceedings in respect of any contravention or apprehended contravention of any directions under this Article, compliance with any such directions shall be enforceable by civil proceedings by the Department for an injunction or for any other appropriate relief.

(8) In this Article—

“dealings” includes dealings entered into otherwise than for purposes connected with the conveyance of gas;

“outside person”, in relation to any person, means any person who is not an associate of his;

and for the purposes of this Article a person is an associate of another if he and that other are connected with each other within the meaning of section 839 of the Income and Corporation Taxes Act 1988.

#### **Making of false statements, etc.**

**46.—**(1) If any person, in giving any information or making any application under or for the purposes of any provision of this Part, or of any regulations made under this Part, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, he shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

(2) Any person who seeks to obtain entry to any premises by falsely pretending to be an employee of, or other person authorised by, a licence holder, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) No proceedings shall be instituted in respect of an offence under paragraph (1) except by or with the consent of the Department or the Director of Public Prosecutions for Northern Ireland.

#### *Supplemental*

#### **Concurrent proceedings**

**47.—**(1) Where an application or a reference is made by a licence holder under this Part in connection with any matter, the proceedings which—

(a) are required under this Part to be taken in relation to that application or reference; and

(b) if applicable, are required by Articles 20 to 24 of the Planning (Northern Ireland) Order 1991 to be taken for the purpose of planning permission;

may, where the Department concerned so directs, be taken concurrently (so far as practicable).

(2) In this Article “the Department concerned” means the Department, or where the matter to which the application or reference relates is a function of some other Department, the Department and that other Department acting jointly.

### **Public inquiries**

**48.**—(1) The Department may cause an inquiry to be held in any case where the Department considers it advisable to do so in connection with any matter arising under this Part other than a matter in respect of which any functions of the Director under Article 19 are or may be exercisable.

(2) Without prejudice to section 23 of the Interpretation Act (Northern Ireland) 1954, the Department may make rules regulating the procedure to be followed in connection with inquiries held by or on behalf of the Department under this Part.

(3) Where—

- (a) an inquiry is to be held under this Part in connection with any matter; and
- (b) in the case of some other matter required or authorised (whether by this Part or by any other statutory provision) to be the subject of an inquiry (“the other inquiry”), it appears to the Department concerned that the matters are so far cognate that they should be considered together,

the Department concerned may direct that the inquiries be held concurrently or combined as one inquiry.

(4) In paragraph (3) “the Department concerned” means the Department, or where causing the other inquiry to be held is a function of some other Department, the Department and that other Department acting jointly.