

**EXPLANATORY MEMORANDUM TO THE ELECTRICITY AND GAS
(DETERMINATION OF TURNOVER FOR PENALTIES) ORDER (NORTHERN
IRELAND) 2005**

2005 No. 287

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department of Enterprise, Trade and Investment and is laid before Parliament by Command of Her Majesty.
- 1.2 This Memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

- 2.1 The Electricity and Gas (Determination of Turnover for Penalties) Order (Northern Ireland) 2005 No. 287 (“the Order”) determines how the turnover of an electricity or gas licence holder is to be calculated for the purposes of establishing the upper limit of any penalty imposed by the Northern Ireland Authority for Energy Regulation (“the Authority”) on the licence holder. The Order provides for the relevant turnover of the licence holder to be calculated in accordance with normal accounting practice in Northern Ireland.

3. Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Legislative background

- 4.1 The Order is being laid before Parliament under paragraph 7(3) of the Schedule to the Northern Ireland Act 2000.
- 4.2 Article 45 of the Energy (Northern Ireland) Order 2003 (“the Energy Order”) gives the Authority power to impose financial penalties on electricity and gas licence holders who breach the conditions of their licences or certain statutory requirements or, in the case of public electricity suppliers, fail to achieve prescribed standards of performance. Article 45(9) of the Energy Order restricts the amount of any such financial penalty to 10 per cent of the turnover of the licence holder and specifies that such turnover is to be determined as provided for in an order made by the Department.

5. Extent

- 5.1 The Order applies to Northern Ireland only.

6. European Convention on Human Rights

- 6.1 In the view of the Department of Enterprise, Trade and Investment, the provisions of the Order are compatible with the Convention rights.

7. Policy Background

- 7.1 The objective of Article 45 of the Energy Order is to strengthen the regulatory powers to deal with breaches of licence conditions, certain statutory requirements or standards of performance. The Order helps to fulfil this objective by putting in place a mechanism for calculating the turnover of a licence holder to enable the establishment of the upper limit of any penalty imposed on a licence holder.

- 7.2 Under the earlier arrangements monetary penalties in respect of a licence breach could only be imposed by the Regulator under Article 19 (now repealed) of the Gas (Northern Ireland) Order 1996 and, even then, could only be made as part of a final order by the Regulator. In effect, this meant that a gas licence holder who had been breaching a licence condition could avoid a penalty by complying at the eleventh hour with a provisional order made by the Regulator.
- 7.3 The option of imposing financial penalties was included in the public consultation on the preparation of the Energy Order. This attracted a moderate level of interest, with the responses largely supportive of the proposed introduction of this new regulatory power.
- 7.4 A respondent to a limited consultation on the preparation of the draft Order suggested that the calculation of a licence holder's turnover should be "in accordance with generally accepted accounting standards". The definition of "applicable turnover" contained in the draft Order requires this to be ascertained "in conformity with normal accounting practice in Northern Ireland" and mirrors the requirement in the corresponding Order in Great Britain (see paragraph 7.7 below). The Department believes that this approach is not incompatible with the calculation being in accordance with "generally accepted accounting standards".
- 7.5 Respondents also commented that the calculation of a licence holder's turnover ought to be restricted to its business activities in Northern Ireland which are authorised by the licence. However, these proposed amendments would be outside the scope of the powers contained in Article 45(9) of the Energy Order. In any case, the inclusion of a licence holder's business activities within Northern Ireland other than those authorised by its licence and also its activities outside Northern Ireland will again ensure consistency in the approach taken throughout the United Kingdom.
- 7.6 The Department does not consider that the Order is politically or legally important.
- 7.7 Both Article 45(9) of the Energy Order and the Order mirror the corresponding Great Britain provisions, namely, Section 27A(8) of the Electricity Act 1989 (as inserted by Section 59 of the Utilities Act 2000), Section 30A(8) of the Gas Act 1986 (as inserted by Section 95 of the Utilities Act 2000), and the Electricity and Gas (Determination of Turnover for Penalties) Order 2002 No. 1111.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for the Order as it has no impact on business, charities or voluntary bodies.
- 8.2 The Order has no impact on the public sector.

9. Contact

Mr George McNally at the Department of Enterprise, Trade and Investment (Tel: 028 9052 9281 Email: George.McNally@detini.gov.uk) can answer any queries regarding the instrument.