



**Northern Ireland  
Assembly**

---

**COMMITTEE FOR  
ENTERPRISE, TRADE AND  
INVESTMENT**

---

**OFFICIAL REPORT  
(Hansard)**

---

**Energy Bill**

9 September 2010

**NORTHERN IRELAND ASSEMBLY**

---

**COMMITTEE FOR  
ENTERPRISE, TRADE AND  
INVESTMENT**

---

**Energy Bill**

---

9 September 2010

**Members present for all or part of the proceedings:**

Mr Alban Maginness (Chairperson)  
Mr Leslie Cree  
Mr Paul Frew  
Ms Jennifer McCann  
Mr Gerry McHugh  
Mr Daithí McKay

**Witnesses:**

Mr Fred Frazer )  
Ms Irene McAllister ) Department of Enterprise, Trade and Investment  
Ms Susan Stewart )

**The Chairperson (Mr A Maginness):**

Briefing the Committee today are Mr Fred Frazer, Ms Irene McAllister and Ms Susan Stewart from the Department of Enterprise, Trade and Investment (DETI) energy markets unit. You are very welcome. Perhaps you would like to present the Department's response on the Bill.

**Mr Fred Frazer (Department of Enterprise, Trade and Investment):**

Certainly, Chairperson. First, I apologise for the late delivery of the Department's response. That was just due to internal processes within the Department. Thank you for giving us an opportunity to update you on the proposed Energy Bill and to discuss the issues that have been raised for consideration by Committee members and stakeholders in response to the initial request for comments on the Bill's provisions.

As members are aware, the Energy Bill is intended to upgrade current legislation applying to the natural gas sector in Northern Ireland in order to bring that sector broadly into line with the electricity sector, with the additional provision of creating a special administration regime for both the gas and electricity sectors.

The Committee called for evidence relating to the Bill on 20 July and several responses were received, which we have been considering. There were no overall objections to the Bill's proposals, but some useful comments were made and, as a result of the issues that were raised, the Department proposes to make two minor amendments. If the Committee is content, I will take a few minutes to provide a brief overview of the key issues, and then I will comment on the Department's response, and take questions.

**The Chairperson:**

Yes, please.

**Mr Frazer:**

The first issue is the introduction of guaranteed standards of service. In response to the Bill's provisions for the introduction of guaranteed standards of performance for gas companies in individual cases, the Consumer Council has suggested that compensation should be paid to customers when guaranteed standards are not met, and that any compensation payments should come from the profits of energy companies, rather than companies' customer base. In response, the Department has clarified that the proposed Bill does indeed make provision for compensation to be paid in such a situation. However, the details of how that will be implemented in practice will be subject to further discussion.

In that and other areas covered by the Energy Bill, legislative provisions cannot be fully prescriptive. The Department will work with the Consumer Council and the Utility Regulator on the detailed outworkings of the Bill's provisions. Although any proposals that are developed will be subject to further consultation, it is envisaged that guaranteed standards for the gas industry will operate along similar lines as those for the electricity sector. There is nothing in the regulatory price control for electricity to cover any such payments, so the company has to fund those. The Utility Regulator has carried out a consultation on standards of performance for utilities, which is useful in that respect.

The Phoenix Group has queried whether it is necessary to legislate in relation to establishing overall standards of performance, but the Department remains convinced that such action is necessary to bring the gas industry into line with the electricity industry in Northern Ireland and to provide consumers with specific, measurable, reliable and timely standards to gauge the level of service that is provided by different gas suppliers. It is also necessary to create a level playing field for competition.

Phoenix has also suggested that guaranteed standards should be implemented across all energy companies, including the oil industry. However, because the oil industry is not regulated in Northern Ireland or GB, and falls outside the remit of the Department and the Utility Regulator, we have no plans to introduce further legislation as suggested. We understand that the regulator is not pressing for the regulation of oil at the moment.

That deals with guaranteed standards of performance. I now turn to the Bill's provision for a deemed contract regime. When someone moves into a new house in the middle of January and switches on their gas supply, but they have not made a formal arrangement with the gas supplier, they effectively have a deemed contract with that supplier for whatever period of time that they wish, until they can formalise that. Phoenix Supply has indicated that the company will accept clause 13 of the Bill, which will enable the Utility Regulator to modify the conditions of supply licences in order to regulate the terms and conditions of deemed contracts on the basis that any modifications are made by agreement with the licence holder.

Currently, the Bill provides only that the regulator must consult the holder of any licence being modified, and it does not specifically require modification by agreement. The Department has sought legal advice on that issue and is satisfied that the current wording of the Bill represents the best approach to handling licensing modifications. Our view is that any other approach may lead to untimely delays and leave the process open to veto by a very small number of licence holders. Unlike in Great Britain, we have a relatively small number of gas licence holders. There is precedent for the Department's proposals in other GB and Northern Ireland energy legislation.

I now move to the issue of enhanced powers of entry. The Consumer Council and Advice NI recognise the need for provisions to extend powers of entry in order to enable gas companies to enter premises and access buildings where meter tampering is suspected. However, they have

reiterated the need to ensure that gas licence holders and supply companies act in a reasonable and fair manner when using those powers and that customers, particularly vulnerable ones, are not left without a gas supply when investigations into meter tampering are carried out. The Department believes that the existing and proposed legal provisions have sufficient safeguards in place with regard to access to property to fully allay those concerns.

For example, the gas supply company must first request access to a property from the occupier and give sufficiently reasonable notice. If a warrant is necessary to gain entry, the gas company must be able to satisfy a court of the need for access on the basis of reasonable suspicion. Reasonable suspicion may be different in each case and must be considered on an individual basis. For example, the fact that customers persistently refuse to permit access to a company to inspect a meter may give rise to reasonable suspicion. Information from a third-party source, which includes but is not limited to the police or other statutory agencies, may suggest that a meter has been tampered with. In addition, an irregular or unusual gas consumption or payment history that is indicated by a significant change between the current and previous consumption or payments may give rise to reasonable suspicion of meter tampering.

We are also satisfied that, in the event of a meter being removed for testing, gas companies will undertake to replace it with a pre-payment meter to ensure that an interrupted supply of gas is provided to the premises. The companies have also made a commitment to the Department to make suitable arrangements for collecting any debts that are identified. For example, pre-payment meters can be programmed to deal with that, in agreement with the householder. Therefore, customers have the option of paying restitution in full, if there is restitution to be paid, or agreeing to a suitable payment method to recover debts over time, such as a pre-payment meter.

I now move to the issue of gas storage. Stakeholders did not raise any issues about the Bill's provisions on gas storage, which are quite limited and aim simply to clarify the meaning of "store" for the purposes of the storage provisions in the Gas (Northern Ireland) Order 1996. I will clarify that: it is the operator of the gas storage facility, not the user, who stores the gas.

The next part of the Bill deals with the appointment of meter examiners. The Bill provides the regulator with the power to delegate gas meter stamping and testing functions. The Consumer Council has commented that it is content with the Department's response that only competent and

impartial persons should be appointed as meter examiners from a body such as the National Measurement Office in GB in accordance with the existing requirements under the Gas Order.

I now move to the introduction of special administration regimes. The Bill provides for the creation of a special administration regime for the natural gas and electricity industries in Northern Ireland to safeguard the provision of supplies by local electricity and gas networks in the event of company insolvency. Stakeholders have not raised any substantive issues about that. However, Northern Ireland Electricity has suggested a minor drafting amendment to clause 24(4), which covers restrictions on voluntary winding up by protected energy companies as part of the provisions for a special administration scheme. The suggested amendment involves changing the reference from “an application for leave” to “an application for permission” in respect of voluntary winding up. The Department has consulted and received advice from the Office of Legislative Counsel (OLC), which has agreed that that minor technical amendment is warranted.

Committee members asked the Department to explore the possibility of including a renewable heat incentive in Northern Ireland through amendments to the Energy Bill. The Department, in liaison with the Office of the Legislative Counsel, considered that issue. Unfortunately, the Committee’s request cannot be accommodated because it falls outside the scope of the Bill. The OLC emphasised that the Bill deals with the gas and electricity industries, and that a renewable heat incentive is outside the scope of the Bill in respect of dealing with those types of utilities.

The Bill is primarily concerned with the gas industry. We are advised that such a change would require substantial redrafting, which could delay the Bill’s progress. However, the Department is considering the need for a separate piece of primary legislation covering a number of miscellaneous energy provisions, which could be introduced next year — basically a new Bill. If taken forward, enabling powers for a renewable heat incentive could be incorporated in the Bill.

A number of issues raised by the OFMDFM Committee in relation to renewable energy in response to the call for evidence on the Bill also appear to fall outside its scope. However, the Department has provided an update for the Committee on developments in each of the areas raised in the summary table. I am happy to spend time going through those issues if the Committee would find it helpful, rather than deal with it now.

Finally, I draw the Committee's attention to a minor amendment that the Department proposes to make for reasons of accuracy. In clause 35(1), the Department intends to change the reference to the Northern Ireland Authority for Energy Regulation to its proper name, which is the Northern Ireland Authority for Utility Regulation. The Office of the Legislative Counsel is content with the proposed change.

That concludes my comments at this stage. I am happy to discuss any of the issues in more depth, or deal with the OFMDFM issues.

**Mr Cree:**

I find the renewable heat sources issue a bit unfortunate. We do not want to reach the stage where we have a new energy Bill every year. That shows a marked lack of foresight. The Committee has received a letter from Aidan McKinney that refers to the "failure" of the Northern Ireland Assembly and the "delay and indecision" of the Assembly. Who is Aidan McKinney? Is he a civil servant?

**Mr Frazer:**

I do not know him and, therefore, I cannot say.

**Mr Cree:**

I am relieved to know that.

**The Chairperson:**

He is from Nutherm.

**Mr Cree:**

He is from Nutherm, and he does not have the courage to put that name on it. Obviously, there is no money for the renewable heat sources this year and probably next year.

**Mr Frazer:**

That is not our field. I will have to come back to you on that. Our colleagues deal with renewable energy issues. As we understand it, DEFRA is proposing to incentivise renewable technologies through the renewable heat incentive (RHI). The incentive is not available in Northern Ireland at present. Our colleagues will be liaising closely with DEFRA over the next

few months as they collate and assess responses to their ongoing consultation and finalise proposals for RHI. Unfortunately, the Bill is limited primarily to the gas and electricity industries and, therefore, that is outside the scope of the Bill.

I appreciate your comments about an energy Bill every year, but we felt pressure to move forward on some of the important issues that are included in the Bill. However, we are scoping out other issues for inclusion in a further Bill, and that will be one of those issues.

**The Chairperson:**

Thank you. If there are no other comments, are members content that the Department's responses fully address the issues addressed by stakeholders?

*Members indicated assent.*