



Northern Ireland
Assembly

COMMITTEE FOR
ENTERPRISE, TRADE AND
INVESTMENT

OFFICIAL REPORT
(Hansard)

Energy Bill

23 September 2010

NORTHERN IRELAND ASSEMBLY

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ENTERPRISE, TRADE AND
INVESTMENT**

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Members present for all or part of the proceedings:

Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Mr Leslie Cree
Mr Paul Frew
Mr William Irwin
Ms Jennifer McCann
Mrs Claire McGill
Mr Gerry McHugh
Mr Sean Neeson

Witnesses:

Mr John French) Consumer Council
Mr Richard Williams)

Mr Brian McHugh) Northern Ireland Authority for Utility Regulation

The Chairperson (Mr A Maginness):

I welcome to the Committee Mr John French and Mr Richard Williams of the Consumer Council.

Mr John French (Consumer Council):

The written evidence that we submitted to the Department and the Committee shows that we broadly support the proposals in the Bill to formalise existing relationships and strengthen current

customer protection. However, we have some concerns about the Bill in areas such as the rights of access, the criminal offence of meter-tampering and guaranteed standards of service.

The Bill proposes that, as is the case with colleagues in the electricity sector, gas suppliers can access a meter if they believe that meter-tampering has occurred. Although the Consumer Council is against meter-tampering as it is a criminal activity and adds over £1 million to the customer's bill in Northern Ireland every year, we believe that safeguards should be in place to ensure that the gas companies, as is the case with the electricity companies, have the right level of suspicion before they can enter a property to check whether a meter has been tampered with. We believe that guidance needs to be given to the suppliers and to the justice of the peace to ensure that they follow that correct procedure. Customers, especially vulnerable ones, should not be left without gas or electricity during that process.

Unfortunately, we believe that meter-tampering is a symptom of the fuel poverty crisis in Northern Ireland at the moment. Many people must make the desperate choice between heating or eating, and the Consumer Council has seen an increase in the yearly number of calls for advice and help from people who are involved in meter-tampering. Citizens advice bureaux have also seen a steady increase in recent years.

Apart from that, our main concern is about the guaranteed standards of performance. We have always said that that is long overdue. The principle of guaranteed standards of service is not to ensure that consumers receive compensation for poor standards of service; rather, it is to incentivise the company to deliver high standards. Our major concern is that compensation payments should not come from other customers but from the pockets of gas companies. At the moment, we feel that the Utility Regulator has a potential conflict of interest because it must promote the gas industry while trying to provide consumer protection. It is time to review that dual role. Apart from those issues, we agree with what is set out in the Bill.

Mr Cree:

Your comments on meter-tampering seem a bit ambiguous. What type of evidence do you envisage gas suppliers will have to produce before they can gain access to the premises of an awkward customer?

Mr French:

It is based on reasonable suspicion. It is if they can prove that there is reasonable suspicion, for example, on a pay-as-you-go meter, that a customer has not been vending, buying over a correct period. Alternatively, when they go to read the meter and it looks incorrect or the figures —

Mr Cree:

Sorry, what does “looks incorrect” mean?

Mr French:

There would be obvious visual evidence that it had been tampered with.

Mr Cree:

But you do not know what the evidence might be. Could it, for example, have been hit with a hammer?

Mr French:

Exactly.

Mr Cree:

Is it not much more likely that the meter could be bypassed, particularly a credit meter? I admit to having some knowledge of that.

Mr French:

Yes.

Mr Cree:

They would need to have reasonably quick access to find that out.

Mr French:

Yes. However, we believe that there should be a case of evidence from the supply company that that has occurred and that the supply company can tell from average consumption in previous periods that the period in which it may have been bypassed looks irregular.

Mr Cree:

I do not want to labour the point, but it is vital. For example, someone who is economising in the use of fuel will use less fuel than in a previous spell. Therefore, if I decide to disconnect my meter from time to time and get free gas, it is a reasonable case that no one will have to come and have a look at my meter.

Mr French:

I suppose, in that case, if workers from the gas company had come to your door, you would have let them in. You would have had nothing to hide.

Mr Cree:

That is the point. They have to be let them in. Do you agree?

Mr French:

Yes. We are trying to say that, as it stands, the gas company can enforce its way in without reasonable suspicion.

Mr Cree:

You talked about a justice of the peace. If workers appear at the door, they would need to have access. There is no use saying that they will come back next week when they have the authority of the justice of the peace, by which time I will have reconnected the meter. You look surprised.

Mr Richard Williams (Consumer Council):

That brings us to the point about the guidance that is required. Perhaps ourselves, and certainly the gas suppliers, will need to give an indication of the kind of evidence that they will provide for having suspicion in the first place. If they see a pattern of use that indicates a suspicion, is that, in itself, sufficient to give rise to suspicion, or is there some other explanation for it? That is why there needs to be some guidance for a justice of the peace to make that decision. Guidance is required, rather than the supply company simply saying that it suspects meter-tampering.

Mr Cree:

In practice, that will be very difficult. In another scenario, I could tee off ahead of the meter. Where would the evidence be then? I could tee off the supply coming into the house.

Mr French:

It is giving people guidance. All we are asking is that gas or electricity companies have guidance on entering a property, and that they cannot do it off their own bats. They have to follow —

Mr Cree:

Do you accept that there are occasions when they will have to get in as a matter of urgency?

Mr French:

Yes. There are provisions for that in the Bill for such circumstances, although it is a slightly different matter if it is an emergency. There are provisions in the Bill for emergency access.

Mr Cree:

Yes, but there is no evidence needed for that. They have a right to enter.

Mr Williams:

Yes. The point is that a justice of the peace would need to be familiar with the issues that you are raising.

Mr Cree:

That is where it gets very woolly. The circumstances are fine looking at it from a desktop situation. However, the reality on the ground is that people can be very adventurous and entrepreneurial in devising things that make the consumption of gas cheaper, but which also has serious risks, not just to them but to the whole row of houses.

Mr Butler:

Obviously, the electricity suppliers have similar powers.

Mr French:

Yes.

Mr Butler:

Leaving aside what Leslie said about situations where there is a lot of expertise in bypassing the meter, what has been the experience of electricity suppliers with regard to people abusing the situation? Obviously, the gas suppliers will talk to their customers first of all if there are

difficulties, and they will try to sort it out before they go into the house.

Mr French:

Northern Ireland Electricity (NIE) has guidance for its staff about entering a property. It has agreed procedures. We are requesting the same for gas companies.

Mr Butler:

Has NIE abused that? Is that a last resort for electricity suppliers? Are there any concerns about it?

Mr Williams:

NIE has a specific revenue protection team that deals with those issues, and it provides some guidance. Far fewer complaints have come through to us about electricity meter-tampering issues than about gas issues. That is surprising given the number gas customers in Northern Ireland compared with electricity customers. It shows that the electricity supplier has formalised that system and has a team that offers guidance.

Mr Butler:

We are concerned, especially in this economic climate, about that issue. When electricity suppliers were first able to gain entry to people's premises, there was a perception that they took that option first and cut people off rather than giving them options to get out of their debt. However, you said that it seems to be working, and I accept that.

Mr Williams:

It was said that the companies should contact customers beforehand to deal with the issue. We want to emphasise that meter-tampering must be dealt with, and all the issues around the danger to the community are important. However, it is symptomatic of the current climate, in which people are getting into debt. We have worked with the Utility Regulator to try to develop best practice on debt management for the companies. They have to carry out a range of processes to manage debt, such as contacting customers early and identifying vulnerable customers. All those measures are important to reduce the number of people who are forced into meter-tampering.

Ms J McCann:

Thanks very much for coming along today. There must be a requirement of reasonable suspicion,

because people must be presumed innocent until they are proven guilty of meter-tampering. In some cases, people who are in arrears with gas payments use about £7 out of every £10 that they put into their meter to pay off arrears. Therefore, they only get £3 of gas for every £10 that they put in. That is a problem for people on low incomes. Meter-tampering is a dangerous practice that should not happen. There seems to be enough provision in the Bill to allow entry.

I have dealt with some constituents' cases that involve Phoenix Natural Gas. Your submission says that consumers should not be left without a supply of gas until it has been proven that meter-tampering has occurred. In some cases, meters are outside a home, and the families who have been accused of meter-tampering have said that they did not tamper with the meter. They had to take legal action because they were not believed. At what stage can the gas supply be turned off? People have claimed that they did not tamper with a meter, but their gas supply has been switched off or has been threatened to be switched off because they have not paid the projected cost of gas that Phoenix say they owe. It is not an actual cost, it is projected cost.

I am particularly concerned about families with young children. I read somewhere — I cannot remember where — that children under five should not be left in homes without heat. In a Housing Executive home, does the duty of care for those children sit with the Housing Executive or with Phoenix Natural Gas? Those children have not done anything wrong, and their parents have said that they have not done anything wrong. They have taken the legal channel, which is the only channel that they have left. Who has the ability to switch their gas supply off? Is it Phoenix or the Housing Executive?

Mr French:

Those guidelines do not exist at the moment, which is why we are calling for clear procedures for the gas companies to follow if they suspect that meter-tampering has occurred. The current arrangements are quite ad hoc, and we want the gas companies to supply consumers until it can be proven that gas meter-tampering has occurred. I do not know where the duty of care lies for children under five in keeping houses warm.

Mr Williams:

My understanding is that it that it would lie with social services, as it involves child protection issues.

Ms J McCann:

You also mentioned in your paper that other consumers should not be charged for the actions of those who have tampered with meters and that it should be the companies. What is the situation now? Do other customers have to pick up those charges or do the gas and electric companies pay for those?

Mr French:

Other consumers pay those charges. I suppose it is like shoplifting. The gas or electricity is consumed somewhere on the system and the overall consumer base must pay for it.

Mr Williams:

You raised the point about meters being outside the properties and customers saying that it was not them who had tampered with those meters. We are concerned about the definition of the offence of meter tampering, which will have two areas of intent: a clear intention, which is fairly obvious; and “culpable negligence”. It would require a legal expert to find out exactly what that term means, but it implies that a person would be guilty of that offence if they did nothing to stop another damaging their meter, and would, therefore, be negligent as a result of someone else’s actions. It is quite a broad term to potentially criminalise someone under.

Ms J McCann:

Are you saying that, if another person damages the meter of a customer, the customer would be liable?

Mr Williams:

That may not be exactly the way that it will be interpreted. It will be down to a judge to determine what “culpable negligence” means, but it is quite a broad term, which is causing us concern.

Mr Cree:

A way out of it would be for the customer to report it if someone else damaged their meter.

Mr G McHugh:

You are welcome to the Committee, gentlemen. The intricacies of how to keep the electricity and gas suppliers right on tampering is a small issue for a lot of us when compared to fuel poverty or

NIE and the gas suppliers cutting people off if they are unable to pay their bills. The deaths that occurred among the elderly and the under fives is a big issue that is always in the back of people's minds.

Generally, I find that the utility companies are — as was said about the banks yesterday — on another planet, when it comes to the payment of bills during a recession. They expect people to choose heating over eating and to ring-fence money from their household budgets to pay them while they potentially starve to death. They expect people to pay whether they are broke or not, and there seems to be no leeway with them. The government back the utilities up and allow them to bring in heavy penalties against people. That is the sides of it, including the Assembly. It seems to agree that people should ring-fence money to pay for utilities, despite the fact that they have no money to pay for anything else.

On the issue of bills and tampering: if someone is spending nothing on utilities it is easy enough to see that something is happening even if there are no visible signs of it. Usually, people get greedy, and they will not put the thing back on until the very last second. It should be easy enough to catch those who are offending. However, I may be wrong, because I do not know much about gas as there is no natural gas in the western area where I come from, and we are unlikely to have it either.

However, even NIE meter readers seem to just walk into an office or building, and they think that they have the right to do so. There is no particular courtesy about asking permission. I do not know whether that extends to the general public. However, they seem to have some sort of right to just walk straight into your house and have a look at the meter. They look regularly at electricity meters. Some people used to put bags of sugar or such things on their meter years ago to try to slow it down. I do not know whether that practice still goes on.

Will you say something about the poverty situation with regard to people being cut off by either of those providers and their inability to pay? Perhaps that alone would create suspicion. I know some elderly people who do not put their heat on at all. It could be -10°C when I go into the house, and they are sitting there trying to survive — and that was before the recession.

Mr French:

As you probably know, the Department for Social Development reckons that fuel poverty in

Northern Ireland affects around 50% of people, which one in two households and is one of the highest levels in western Europe. When the last official data was published the year before last, that equated to 1,000 excess winter deaths, which is the highest figure in western Europe. You can understand the crisis of people in fuel poverty who have to make the choice between heating or eating. It is a difficult choice.

A few years ago, the Consumer Council published 'In Control?', which looked at consumers who were self-disconnecting because they could not afford to pay for the energy. We can understand why people become involved with meter-tampering. However, we cannot condone it because, as I said earlier, it adds extra cost to the rest of the consumer base. People should pay for what they consume. Nevertheless, as my colleague said, a lot of it comes down to ensuring that customers know exactly what they owe. In many cases, people find themselves in an unexpected situation in which they have a high bill for one reason or another, which could be their own fault or the fault of the company misreading the meter. We have been working with the Utility Regulator to try to ensure that there are correct debt and disconnection procedures, and to ensure that the companies have a good understanding of the level of debt and try to minimise the level of bad debt in each company.

Mr G McHugh:

How the companies carry out their business is important. I know of one instance when Northern Ireland Water was looking for £2,000 off someone who did not owe more than £65, and several letters were sent before I got to the bottom of it. We do not want such situations, especially with the elderly.

Mr Williams:

Disconnection is a last resort. NIE Energy has a policy of no disconnection, but that is not the same for the gas industry over here as yet. However, we are aiming for that to be the policy.

Mr Frew:

Most of the questions that I was going to ask have been answered. However, I want to tease out more information, if I may. You say that meter-tampering is, to some extent, a symptom of the crisis levels of fuel poverty in Northern Ireland. It is something that we, as public representatives, and the Consumer Council in its role, take very seriously, and so we should. It is never far from our minds. I admit, Leslie, that I have a certain degree of experience and

knowledge of electricity meter-tampering.

Can you give a percentage of how many instances of meter-tampering are because of fuel poverty? Can you give us some detail on that? The question is similar to Mr McHugh's. Sometimes, people I know who have been involved in electricity meter-tampering are not so much needy as greedy. It is the Robin Hood mentality, when people try to get one over on the utility company. I am mindful of fuel poverty and of the problems that people face, but can you give some sort of measure of how endemic the connected problems of fuel poverty and meter-tampering are?

Mr French:

We have only anecdotal evidence, and we agree that there will always be people who can pay but will not pay for gas and electricity. Those people need to be pursued because, as Mr Frew said, they try to get one over on the gas or electricity companies. From our call centres and from discussions with citizens advice bureaux, we have noticed an increase in incidents of meter-tampering in private areas. People are struggling and are making the choice that they cannot afford the electricity or gas.

Mr Frew:

Most of the vulnerable people who are affected by fuel poverty might be elderly. I cannot imagine that an elderly person is able to organise tampering of a meter or construction work to bypass payments. Are the most vulnerable people in fuel poverty coming to you?

Mr French:

There has been an increase in the involvement of single parents with young families. We have released statistics on who is most likely to be in fuel poverty. That is one of the most vulnerable groups.

Mr Williams:

Anecdotally, we hear that the people who are involved do not always initiate the tampering. People often come to their house or to an estate and offer that service on the basis that it will cut their bill by a certain amount for a £50 or £100 payment. They make it difficult for people who are short of cash and who have young children. I am not saying that they should take that option. A case was put through to us yesterday of a woman who has been disconnected by the gas

company. She suffers from Parkinson's disease and is the sole carer of a disabled child. That is not necessarily a typical case; however, it shows that people who should not be in that position are making the wrong choice.

Mr Irwin:

Your submission says that the Consumer Council:

“strongly advocates that the compensation payments awarded to consumers for failed delivery must come from the profits of the gas company.”

If a gas company has to pay a large amount of money over a period of time for failure to deliver, would it not be difficult to ascertain whether the gas company has tried to pass that on? It would be difficult to stop a company passing that on to the consumer because it would be hard to prove.

Mr French:

Gas companies and NIE Energy use regulated tariffs. They are subject to scrutiny by the Utility Regulator, the Consumer Council and the Department of Enterprise, Trade and Investment (DETI). The Utility Regulator looks at the costs that the companies put through, and it would be hoped that, if it is on such a sizeable scale, it would be picked up.

Mr Williams:

It might be more difficult with completely free, unregulated competitive tariff companies, because their costs are less transparent. It will definitely be more difficult to dig it out in that situation.

The Chairperson:

Thank you very much. Am I right in thinking that what we are dealing with relates to clause 14?

Mr French:

I am afraid that I am not able to answer that.

The Chairperson:

I am slightly concerned. I just want to be clear about this in my own mind. Are you saying that, for a supply company to enter the premises, it needs reasonable suspicion?

Mr French:

To enter the property, yes.

The Chairperson:

That is the basic test: reasonable suspicion. Not a suspicion, but reasonable suspicion, which is a higher test than mere suspicion.

Mr French:

Yes.

The Chairperson:

So, there has to be some evidence of tampering or something of that nature; for example, the supply being unusually low. That does not appear in the Bill, in clause 14, as far as I can see. Is that contained in the Gas (Northern Ireland) Order 1996?

Mr French:

I am sorry; I do not know. We can come back to you on that.

The Chairperson:

I assume that it appears in the Gas Order; otherwise, where would it come from? Perhaps my colleagues can assist me identifying where it is in the Bill.

Mr Cree:

It is not in clause 14.

The Chairperson:

It is not in clause 14, and it does not seem to be in clause 10, as far as I can see, so it must be in the Gas Order. Perhaps we can clarify that. It is an important point, because reasonable suspicion is a good test in most circumstances and is applied in many different situations, so we need to clarify that that is based in statute.

In your submission, you also say that entry to the property against the occupier's permission should be a last resort. That is a very fine proposition and a very fine aspiration, but how can that

be expressed that in the Bill? Are you suggesting that the term “last resort” be used in the Bill? I am not so certain that that means very much in law.

Mr French:

I am not a lawyer —

The Chairperson:

No, and I am not trying to trick you or anything like that; I am just asking you for your comment.

Mr French:

I think that it refers to instances when the gas or energy company has asked the householder if it can enter their property and has been refused; then, as a final resort, it may get a warrant to enter the property.

The Chairperson:

You say that guidance is needed for suppliers and the justices of the peace as to what is sufficient evidence to provide reasonable cause to suspect meter-tampering. Where is the justice of the peace reference in the Bill?

Mr French:

In discussion with DETI,—

The Chairperson:

Again, does that arise from the Gas Order?

Mr French:

I do not know. We can find out and get back to you.

The Chairperson:

If any colleagues have any views on this, let me know. I do not see it in the Bill.

Mr Williams:

My understanding is that, if entry cannot be gained with permission from the occupier, a warrant would need to be obtained from a justice of the peace.

The Chairperson:

I am not sure that I see reference to that in the Bill, but it may well be there and I have just not seen it, or it may well be in the Gas Order. We need to check that out. What you are saying is that there needs to be guidance for suppliers. Am I right in thinking that that would not be in the Bill as such but would just be advice coming from the Department?

Mr French:

Yes.

The Chairperson:

It could be some sort of code of practice. Therefore, we, as legislators, cannot really concern ourselves with that. All that we can hope is that there would be guidance and that it would appear at some stage from the Department. Would that satisfy you?

Mr French:

Yes.

The Chairperson:

The submission went on to state that consumers should not be left without a supply of gas until it has been proven that meter tampering has occurred. How would you implement that? It is a good aspiration and something that most people would support. However, if, for example, a gas company gains access and discovers that there has been meter-tampering, can that company not terminate the gas supply?

Mr French:

Yes. That would present a health and safety issue, so the company would have to be able to terminate the gas supply.

The Chairperson:

Do you find that to be reasonable?

Mr French:

Yes.

The Chairperson:

There are similar situations with electricity meters. Does legislation cover those?

Mr French:

Yes.

The Chairperson:

To your knowledge, are electricity meters covered in similar or different terms to what is proposed in the Bill?

Mr French:

As far as I am aware, they are covered in similar terms.

The Chairperson:

Is the test of reasonable suspicion also used with electricity meters?

Mr French:

I am unsure about that.

The Chairperson:

OK. It might be helpful if we knew what happens with the electrical supply to guide us in our consideration of those matters.

Ms J McCann:

I know that many of your concerns cannot be addressed in the Bill but through guidance. However, do you feel that the definition of the offence by “culpable negligence” should be in the Bill? You listed it as a concern, and I assume that that definition is in the Bill.

Mr Cree:

It is in clause 10.

Ms J McCann:

Are you suggesting that an amendment should be made to that clause?

Mr Williams:

I suggest that it is amended, because it appears to be too broadly worded.

Ms J McCann:

That is something that we could factor in. The rest may be addressed through guidelines, but that part would have to be an amendment to the legislation.

The Chairperson:

It probably would.

Mr Cree:

It is actually in clause 10(1).

Ms J McCann:

Is it? Is it amended already?

The Chairperson:

Let us look at what it says. Clause 10(1) states:

“A person who intentionally or by culpable negligence damages or allows to be damaged any gas plant provided by a gas conveyor shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.”

The offence is established there.

Ms J McCann:

I know, but there is concern that the term is too broad and that it might lead to the criminalisation of people too easily. That is maybe where we can come in to try to firm it up.

Mr Cree:

The rest of the clause elaborates on the definition of the offence; we should read through it.

Ms J McCann:

It is for individuals to decide on that issue. Committee members could propose their own amendments.

The Chairperson:

They could. However, let us look at the remainder of the clause. Clause 10(2) states:

“Where an offence has been committed under subsection (1) by the occupier of any premises (or by the owner of the premises if they are unoccupied when the offence is committed) in relation to any gas plant provided by a gas conveyor for making or maintaining a connection to the premises, the gas conveyor may disconnect the premises.”

Clause 10(3) states:

“Where an offence has been committed under subsection (1), in relation to a gas meter provided by a gas conveyor which is situated on any premises, by the occupier (or by the owner of the premises if they are unoccupied when the offence is committed), the gas conveyor may disconnect the premises and may remove the meter.”

Clause 10(4) states:

“A meter removed under subsection (3) shall be kept safely by the gas conveyor until the Authority authorises its destruction or disposal.”

That completes that clause. What is your point in relation to it, Ms McCann?

Ms J McCann:

Guidelines are needed for suppliers and justices of the peace, and entry to the property must be a last resort. However, do you feel that that point could be firmed up a bit so that people are not criminalised? That is what I was trying to ask. Is there some way that an amendment could be made?

Mr French:

Yes; it is too broad at the moment.

Ms J McCann:

It is too broad at the moment.

The Chairperson:

Do you think that the term “culpable negligence” is too broad to be included in the Bill?

Mr Williams:

Yes. Further clauses that go into more depth and take the sting out of that may be one solution. However, as it stands, the definition of the offence is worded too broadly.

The Chairperson:

Do you think that the term “intentionally damages” is sufficient to cover that problem?

Mr Williams:

The definition of “intentionally” is quite clear. The suggestion behind “culpable negligence” —

The Chairperson:

Do you think that that is a better way of expressing it than “culpable negligence”, which might be a much wider offence?

Mr Cree:

Surely, that covers third-party involvement. That is the difference here, but it is a job for another day.

The Chairperson:

It is very useful to have your view on that.

Mr French:

If the householder is involved in meter-tampering, what is in the Bill is fair enough. However, if the householder is unaware that meter-tampering has occurred, we feel that, at the moment, that person could be captured.

The Chairperson:

I am trying to imagine a situation in which a householder says that someone can do what they want with a meter and damage or injury is caused as a result. Are you saying that that householder should not be penalised?

Mr French:

No, because that householder told someone to go ahead and do something with the meter.

The Chairperson:

Does that not let the householder off the hook?

Mr French:

No; we are saying that that person should be charged.

Mr Williams:

That person has been positive rather than passive in their action. "Culpable negligence" could include passive action.

The Chairperson:

I do not want to be picky, but am I not being negligent if I tell you to go ahead and do whatever you want? If I am being culpably negligent, does the removal of that phrase not let me off the hook?

Mr Cree:

Of course it does.

Mr Williams:

Have you not also intentionally allowed someone to damage the meter? What is in the Bill covers that offence.

The Chairperson:

I am not sure that I would be guilty of an offence. I did not intentionally damage the gas appliance. I did not do it personally.

Mr Williams:

You intentionally allowed it to be damaged, which is what is stated:

"intentionally...damages or allows to be damaged".

If someone comes to you and says that they will do something and you tell that person to go ahead and do it, you have intentionally allowed the meter to be damaged. Is that not sufficient?

The Chairperson:

That is a fair point.

Mr Cree:

It is not really for us to debate that; that is for another day.

In the case of third-party involvement in which wilful damage had nothing to do with the householder, that person, unless they report it, is also culpably liable because they know that it has happened. We are playing here. It must be much tighter than what has been suggested here this morning and afternoon.

The Chairperson:

OK, there is that argument. We are grateful to you for raising it.

Ms J McCann:

When will we go through clause-by-clause scrutiny?

The Committee Clerk:

An extension has been granted until the end of November. Therefore, I imagine that clause-by-clause scrutiny will be undertaken in October.

The Chairperson:

There is time to think about all of those issues. Perhaps, the Department could provide us with a copy of the Gas (Northern Ireland) Order 1996 and relevant guidance. Thank you very much, gentlemen. That is very helpful.

We will move on to oral evidence from the Northern Ireland Authority for Utility Regulation. The members' packs include letters from the Utility Regulator on the Energy Bill and a briefing paper from the Committee Clerk. The Committee will be briefed by Mr Brian McHugh, director of gas at the Northern Ireland Authority for Utility Regulation. You are very welcome. I invite you to make some opening comments.

Mr Brian McHugh (Northern Ireland Authority for Utility Regulation):

Thank you, Chairman. We support the Bill strongly. We have worked with the Department to put it together. Some clauses are designed to fill gaps or to match measures that are in place for electricity. The special administration regime is included because we believe that it is necessary in certain circumstances to have an extra tool in the toolkit if conveyance companies get into significant trouble.

Therefore, we welcome the Bill very much. When it is introduced, we will have work to do to implement aspects of it via licence modifications.

The Chairperson:

Thank you very much indeed. I would like clarification on a couple of matters. A provision in the Gas Order allows for entry to premises when there is reasonable suspicion of tampering. Is that correct?

Mr B McHugh:

Powers of entry are included in schedule 5 to the Gas Order, which states that there must be:

“reasonable cause to suspect that there may be a danger to life or property”.

However, a potential gap exists whereby if an authority suspects that a meter has been tampered with, but does not suspect danger to life or property, it does not have power of entry. The clause in this Bill intends to cover that.

The Chairperson:

Which clause?

Mr B McHugh:

Clause 14. Having listened to earlier conversations, I am not aware that reasonable suspicion is included in the current draft of the Bill. My understanding is that the current draft allows entry on the basis of potential damage to the meter; therefore, potential meter-tampering. Clause 14 does not state that there must be reasonable suspicion of danger to life or property. I do not see where it explicitly says that there must be reasonable suspicion of meter-tampering. Therefore, on the basis of this draft, any authorised person will be able to go to a justice of the peace and say, “I do not have reasonable suspicion of a danger to life or property, but I think that there has been meter-tampering and would, therefore, like to enter the property”. However, I do not see the words “reasonable suspicion of metering-tampering” here.

The Chairperson:

Could clause 14 cause difficulties in the future if it remains as it is? There is no specific reference to meter-tampering and reasonable suspicion. Therefore, a gas company that entered premises may not have the legal power to do so in such circumstances.

Mr B McHugh:

I certainly agree that that should be reviewed. As regards the legal power, it is my reading that gas companies can enter premises to inspect the gas system and any gas fittings and that they do not necessarily need reasonable suspicion to do so. It is, therefore, maybe even broader. They can go to a justice of the peace and say that they have failed to get access to a property — the detail of that is in the Gas Order — and that they would like to enter the property because they have a complaint, I think that that is what it is referred to. The justice of the peace will then consider whether to give them the right of access.

The Chairperson:

Where is the reference to the justice of the peace?

Mr B McHugh:

It is in the Gas Order. Subsection 8 of clause 14 refers to paragraphs 5 to 8 of schedule 5 to the Gas Order. Those paragraphs deal with justices of the peace.

The Chairperson:

That is where justices of the peace arise in the legislation?

Mr B McHugh:

Yes. The gas company concerned must go to the justice of the peace with a complaint and request a warrant.

The Chairperson:

My reading of clause 14, as presently drafted, is that there is a wider power for accessing or entering premises than simply doing so on the basis of reasonable suspicion of tampering.

Mr B McHugh:

Yes. I am not a legal expert, but that is my reading of it.

The Chairperson:

OK. Thank you for clarifying that. I also wanted you to advise the Committee on the matter of a code of practice. There is no code of practice, as such, in the legislation. Is that right?

Mr B McHugh:

There is no code of practice.

The Chairperson:

That is something that the Department could produce to advise gas companies, is that right?

Mr B McHugh:

Potentially. The safeguards in place are the justices of the peace. A gas company needs to explain its complaint to a justice of the peace to get a warrant. There are also other requirements and safeguards, such as securing the premises when leaving and providing identification. Gas licences also place obligations on gas companies to provide identification and to ensure that whoever enters the property, be it an engineer or a gas engineer, has the necessary skills to do whatever it is that they are meant to be doing. Therefore, there are safeguards in place.

There is an issue about whether the licence is the right place to put in additional safeguards and whether the Consumer Council should agree those with the companies. However, I guess that such safeguards are non-binding because they are guidelines. That is something that can be considered. However, there are a number of safeguards in various places.

The Chairperson:

OK. Are there any other questions? Mr Cree wishes to ask a question.

Mr Cree:

Clause 10 —

The Chairperson:

Sorry, Mr Cree; I did not realise that the Deputy Chairperson was due to speak first.

Mr Butler:

Go ahead.

Mr Cree:

Clause 10 is about meters being taken from premises. It says that a meter removed:

“shall be kept safely by the gas conveyor until the Authority authorises its destruction or disposal”.

Why not add “its repair”. What do you think of that? It seems a bit silly to throw it away if it can be repaired.

Mr B McHugh:

Yes, that is true.

Mr Cree:

I meant to mention that earlier, Chairperson. I believe that that would help.

Mr Butler:

Thank you for your presentation, Brian. I want to ask about compensation payments and whether they should come out of the customer base. The Consumer Council referred to that. Where is the incentive, if compensation payments are not coming out of the gas companies’ profits? Is there a conflict of interest with the Utility Regulator? There is an intention to protect customers while trying to promote the gas industry.

Mr B McHugh:

Yes.

Mr Butler:

It is a grey area.

Mr B McHugh:

It has been important up to now, and it will be interesting to discover what it actually means. We will have to grapple with it when the time comes to make decisions. On the specific issue, we see the promotion of the gas industry to be consistent with ensuring that customers get a good service. It is important that, as part of growing the gas industry, it has a good reputation. It would not necessarily be inconsistent with that duty. There is a precedent in the electricity business in which the shareholders take the risk for what we call guaranteed standards when it comes to compensation payments. The Utility Regulator has determined that precedent. Once the Bill is passed, we will consult on the guaranteed standards and on who should pay for them. There is a precedent, and we would need strong reasons why that would not —

Mr Butler:

What happens in the electricity industry? Do compensation payments come out of its profits?

Mr B McHugh:

Yes, they come out of its profits.

Mr Butler:

There obviously would be no incentive if they were not taken out of the profits. The gas industry might decide to charge everyone else a percentage.

Mr B McHugh:

We will go through the regulated companies' cost bases line by line. There is a question as to how unregulated companies pass those costs on. The Energy Bill is very similar to legislation in GB, where the supply companies are unregulated. There is competition, so there is no need to regulate them. There is a question there.

Mr Butler:

They pass those costs on.

Mr B McHugh:

Ofgem, which is the regulator in London, would argue that it is a competitive matter. Lower compensation payments bring a competitive benefit, so there is a balancing act, but it is not as black and white in the case of unregulated companies.

The Chairperson:

In summary then, this is a piece of filling-in legislation.

Mr B McHugh:

Yes. Apart from the special administration section, which is new, and which applies to the electricity and gas industries. It is important, but the other parts of the Bill bring the gas industry into line with the electricity industry or clarify some other matters.

The Chairperson:

Essentially, the same legislative provisions would apply to the electricity industry now as will

apply to the gas industry in future if the Bill is passed.

Mr B McHugh:

Yes. That is true for the standards of performance for the deemed contracts and for powers of entry. Those are all in place in the electricity industry. I imagine that the drafting in clause 14 is probably taken from the regulations that relate to the electricity industry. That may be why there is no mention of reasonable suspicion in the Bill; there is no mention of it in the legislation that applies to the electricity industry.

The Chairperson:

We need to clarify that. Thank you very much; you have been very helpful.