



Northern Ireland
Assembly

**COMMITTEE FOR
ENTERPRISE, TRADE AND
INVESTMENT**

**OFFICIAL REPORT
(Hansard)**

**Energy Bill:
Clause-by-Clause Consideration**

4 November 2010

NORTHERN IRELAND ASSEMBLY

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INVESTMENT**

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Members present for all or part of the proceedings:

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

Witnesses:

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

The Chairperson (Mr A Maginness):

I invite the Committee Clerk to take the Committee through the issues that have been raised in relation to clauses 10, 14 and 35. For each clause, when the Clerk has outlined the conclusions on issues raised during consultation and the Department's response, I will ask members whether they have any further issues.

The Committee Clerk:

Clause 10, entitled “Damage to gas plant”, establishes a criminal offence in respect of persons who intentionally or negligently damage gas equipment. It also allows gas companies to disconnect premises and/or remove gas meters in those circumstances.

The Consumer Council is concerned about the term “culpable negligence”, because it implies that a person is guilty of an offence if they do nothing to stop another person damaging their meter. Therefore, they would be negligent as a result of someone else’s actions. Following consideration of the draft Bill at the meeting on 14 October, there were still some concerns about that aspect of clause 10. In its response to the Committee, which is included in members’ papers, the Department reiterated its position that the Office of the Legislative Counsel (OLC) believes that “culpable negligence” denotes a high degree of negligence and merits criminal sanctions. It is more commonly referred to as gross negligence. The OLC advised that amending the clause would result in gas provisions being out of line with electricity legislation. Therefore, the Department considers it desirable to retain clause 10(1) as originally drafted.

The Committee agreed to ask the Consumer Council for its views on the Department’s response. The Consumer Council’s view is that, to justify its inclusion in the Bill, the term “culpable negligence” requires clarification about how it would be applied in practice. The Committee Office suggested to the Department that it may be helpful to provide a definition of the term “culpable negligence”, and DETI and energy industry officials sought further advice from the OLC on the issue. They were advised that there is no precise legal definition of “culpable negligence”, which denotes a high degree of negligence, merits criminal sanctions and is perhaps more commonly referred to as gross negligence.

Also at the meeting on 14 October, the Committee noted that the Department had agreed to amendments to clause 10(1). The Department intends to move those amendments at Consideration Stage. The proposed amendment to clause 10 is in annex 3 of the Department’s response to the Committee, and members may wish to consider whether they are content, first with the proposed amendment to clause 10 and, secondly, with clause 10 as amended.

The Chairperson:

Are there any issues arising?

Ms J McCann:

Although I am not going to go into it again, I still have a difficulty with “culpable negligence”. I think that it should be “intentional damage” only.

The Chairperson:

OK. You have expressed that view on previous occasions. What is the best way to proceed? Mr Frazer or Ms McAllister, do either of you have a view on that?

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

If it is of any help to the Committee, we had to think about the practical outworkings of that clause, and we spoke to the respective gas companies. You mentioned the OLC response that we provided and the fact that there is no specific definition. However, in line with the OLC response, our understanding is that “culpable negligence” is the same as “gross negligence”. The gas companies advised us that the police, rather than the gas companies, will take any prosecutions. There must be sufficient evidence to take a case of culpable negligence against someone, and, to be convicted of it, a significant degree of negligence must be proved. The gas companies consider that it would be difficult to pursue a householder or tenant if damage was done to their gas plant if it was external to a property or in an open or common area in a block of apartments or flats. If the meter was in such an open area, any damage could be the result of vandalism and it could not be proved that the owner of the meter had caused that damage, and that is also the case for external meters. The gas companies have advised us that if damage was caused to someone’s meter, they would expect that damage to be reported to the proper authorities and they would understand and take that into account.

Our understanding is that the prosecutions are taken by the police rather than the gas companies, which only pursue cases of restitution of costs for non-payment of gas. I do not know whether that is helpful to the Committee in trying to understand the practicalities.

The Chairperson:

Ms McCann, you heard the response from the Department officials. Are you still minded to proceed in the way that you suggested?

Ms J McCann:

Yes.

The Chairperson:

OK. There are two options: we can put the matter to a vote today; or Ms McCann could bring an amendment at Consideration Stage to delete the phrase “culpable negligence” from the clause.

Ms J McCann:

I could do both.

The Chairperson:

You could. If you were to lose the vote in the Committee today you could table an amendment at Consideration Stage. We could proceed to a vote now.

The Committee Clerk:

The vote will be taken when we move to formal clause-by-clause scrutiny of the Bill.

The Chairperson:

Yes. Members should be aware that that vote will be taken. We will proceed with the rest of the briefing.

The Committee Clerk:

Clause 14 deals with powers of entry. That clause concerns the statutory powers for licensed gas companies to enter premises. At its meeting of 14 October, the Department addressed the Committee’s concerns about the terms “reasonable suspicion” and “meter tampering”. The Department responded that, on the basis of legal advice received, it believes that it is not necessary to change the wording of the Bill, as the current wording gives rise to a power of entry to carry out inspections that is not limited by reference to any particular purpose for the inspection.

Concern was also raised at that meeting about the potential danger of alerting an occupier to the fact that permission would be sought from a justice of the peace to enter premises and determine whether a gas plant was interfered with. In its response, the Departments stated that the Gas (Northern Ireland) Order 1996 stipulates that when a gas company applies for a warrant to enter premises, the justice of the peace must be satisfied that:

“the consent of the occupier has been refused or seeking that consent would defeat the object of the entry”.

OLC has confirmed that the existing provision provides that a gas company does not need to inform the occupier if to do so would defeat the purpose of entry. In such a case, the gas company can seek to obtain a warrant under clause 14(1)(a) and enter the premises without any advance notice to the occupier.

The Chairperson:

Are there any matters arising?

Mr Frew:

That is common sense and a good tool. Leslie Cree and I spoke about that last week.

The Chairperson:

Are members content?

Members indicated assent.

The Committee Clerk:

Clause 35 is entitled “interpretation”. The Department informed the Committee that it intends to bring forward a minor drafting amendment to clause 35 to correctly reflect the name of the Northern Ireland Authority for Utility Regulation. It is as follows:

“In clause 35, page 23, line 40, leave out ‘energy’ and insert ‘utility’.”

The Chairperson:

Is that agreed?

Members indicated assent.

The Chairperson:

I will now move through each clause and the schedule and seek the Committee’s position on each.

Is the Committee content with clauses 1 to 9 as drafted?

Clauses 1 to 9 agreed to.

The Chairperson:

We are at clause 10. I will read out the amendment that is proposed by Ms McCann to clause 10.

It states:

“In clause 10, page 6, line 40, leave out ‘or culpable negligence’.”

The question is that the amendment be made. Will colleagues indicate which way they want to vote?

Mr Frew:

If we leave out “or culpable negligence”, what will go in its place?

Ms J McCann:

“Intentionally damages” is already there.

The Chairperson:

I will just go through this again to reflect the amendment. The amendment proposed is: In clause 10, page 6, line 40, leave out “or culpable negligence”. The Question is that the amendment be made.

The Committee divided: Ayes 4; Noes 2.

AYES

Mr Butler, Ms J McCann, Mrs McGill, Mr McHugh.

NOES

Mr Frew, Mr Givan.

Amendment accordingly agreed to.

The Chairperson:

The amendment has been agreed by the Committee. The question is that the Committee recommends to the Assembly that clause 10 be amended as agreed by the Department as follows.

In clause 10, page 6, line 40, leave out “negligence” to “conveyor” in line 41 and insert:

“(a) damages or allows to be damaged any gas plant provided by a gas conveyor

(b) alters the index of any meter used for measuring the quantity of gas conveyed or supplied by a gas conveyor or a gas

supplier; or

(c) prevents and such meter from duly registering the quantity of gas conveyed or supplied.

In clause 10, page 7, line 3, leave out subsection (1) and insert subsection (1A).

In clause 10, page 7, line 14, leave out “or disposal” and insert “disposal or repair”.

Are Members agreed?

Mr Givan:

What is it that we are agreeing to? Sorry, I am not quite with you.

The Chairperson:

Effectively, the Committee raised points about meters and interference with meters. The Department took on board some of the points that the Committee made and, as a result, came back with the amendments that I just read.

Mr Givan:

So this is just agreeing to what the Department said that it would agree with the Committee on?

The Chairperson:

Yes.

Mr Givan:

Thank you.

The Chairperson:

Are members content?

Members indicated assent.

Clause 10, as amended, agreed to.

The Chairperson:

I will move on to the next part of the Bill. Is the Committee content with clauses 11 to 23 as

drafted?

Clauses 11 to 23 agreed to.

The Chairperson:

The Question is that the Committee recommends to the Assembly that clause 24 be amended as follows, as proposed by the Department: Page 16, line 8, leave out “leave” and insert “permission”.

Amendment agreed to.

Clause 24, as amended, agreed to.

The Chairperson:

Is the Committee content with clauses 25 to 34 as drafted?

Clauses 25 to 34 agreed to.

The Chairperson:

The Question is that the Committee recommends to the Assembly that clause 35 be amended as follows, as proposed by the Department: In page 23, line 40, leave out “energy” and insert “utility”.

Amendment agreed to.

Clause 35, as amended, agreed to.

The Chairperson:

Is the Committee content with clauses 36 and 37 as drafted?

Clauses 36 and 37 agreed to.

The Chairperson:

Is the Committee content with the schedule as drafted?

Schedule agreed to.

The Chairperson:

Is the Committee content with the long title as drafted?

Long title agreed to.

The Chairperson:

The draft report of the Bill will be considered at next week's Committee meeting.