



Number 40 of 2006

ENERGY (MISCELLANEOUS PROVISIONS) ACT 2006

REVISED

Updated to 26 July 2017

This Revised Act is an administrative consolidation of the *Energy (Miscellaneous Provisions) Act 2006*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975 (3/1975)* to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *National Shared Services Office Act 2017 (26/2017)*, enacted 26 July 2017, and all statutory instruments up to and including *Appointment of Special Adviser (Minister for Rural and Community Development) Order 2017 (S.I. No. 388 of 2017)*, made 26 July 2017, were considered in the preparation of this Revised Act.

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Introduction

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was first passed.

Related legislation

This Act is not collectively cited with any other Act.

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions. A version without annotations, showing only textual amendments, is also available.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1993, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Minerals Development Act 2017 (23/2017)*
- *ESB (Electronic Communications Networks) Act 2014 (5/2014)*
- *Local Government Reform Act 2014 (1/2014)*
- *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010 (11/2010)*

- *Electricity Regulation (Amendment) (Single Electricity Market) Act 2007 (5/2007)*

All Acts up to and including *National Shared Services Office Act 2017 (26/2017)*, enacted 26 July 2017, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *Energy (Miscellaneous Provisions) Act 2006 (section 28(4)) Regulations 2013 (S.I. No. 155 of 2013)*
- *European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011)*
- *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011 (S.I. No. 418 of 2011)*
- *Energy (Miscellaneous Provisions) Act 2006 (Commencement of Section 6) Order 2009 (S.I. No. 298 of 2009)*
- *Energy (Miscellaneous Provisions) Act 2006 (Section 13) (Commencement of Remaining Provisions) Order 2009 (S.I. No. 238 of 2009)*
- *Energy (Miscellaneous Provisions) Act 2006 (Commencement of Certain Provisions) Order 2008 (S.I. No. 68 of 2008)*
- *Energy (Miscellaneous Provisions) Act 2006 (Commencement of Section 19) Order 2007 (S.I. No. 292 of 2007)*
- *Energy (Miscellaneous Provisions) Act 2006 (Commencement of Section 8) Order 2007 (S.I. No. 266 of 2007)*

All statutory instruments up to and including *Appointment of Special Adviser (Minister for Rural and Community Development) Order 2017 (S.I. No. 388 of 2017)*, made 26 July 2017, were considered in the preparation of this revision.



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ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY AND GENERAL

Section

1. Short title and commencement.
2. Definitions.

PART 2

AMENDMENTS TO ACT OF 1999

3. Functions of Commission regarding all-island energy market.
4. Functions of Commission regarding electrical safety and regulation of electrical contractors.
5. Licences under Act of 1999.
6. Combined heat and power.
7. Policy directions to Commission.
8. Interconnectors.
9. Emergency measures.
10. Amendment of Schedule to Act of 1999.

PART 3

NATURAL GAS SAFETY

11. Amendment of section 2 of Act of 1999.
12. Functions of Commission regarding natural gas safety.
13. Amendment of Act of 1999 relating to gas safety and gas installers.

14. Extension of gas safety provisions to liquefied petroleum gas.

PART 4

AMENDMENT OF GAS ACT 1976

15. Amendment of section 2 of Act of 1976.
16. Power of Bord Gáis Éireann to create capital stock.
17. Amendment of section 10A of Act of 1976.
18. Amendment of section 10B of Act of 1976.

PART 5

AMENDMENT OF GAS (INTERIM) (REGULATION) ACT 2002

19. Amendment of Gas (Interim) (Regulation) Act 2002.

PART 6

AMENDMENT OF TURF DEVELOPMENT ACT 1998

20. Increase in borrowing power of Bord na Móna.

PART 7

AMENDMENT OF ACT OF 2001

21. Amendment of Act of 2001.

PART 8

EFFECT OF CERTAIN AMENDMENTS MADE TO PLANNING AND DEVELOPMENT ACT 2000

22. Certain development approvals under Part XI of Planning and Development Act 2000.

PART 9

REHABILITATION OF MINES

23. Interpretation (*Part 9*).
24. Mine rehabilitation plan.
25. Advances by Minister for mine rehabilitation plans, etc.
26. Mine rehabilitation plan and appointment of local authority as agent of Minister.
27. Power of entry.
28. Power of Minister to acquire lands, etc.
29. Recovery of expenditure on mine rehabilitation plan.
30. Scope of *Part 9*.

SCHEDULE

ACTS REFERRED TO

Acquisition of Land (Assessment of Compensation) Act 1919	9 & 10 Geo., 5 c. 57
Companies Act 1963	1963, No. 33
Derelict Sites Act 1990	1990, No. 14
Electricity (Supply) (Amendment) Act 2001	2001, No. 9
Electricity and Gas Regulation Acts 1999 to 2002	
Electricity Regulation Act 1999	1999, No. 23
Fishery Harbour Centres Act 1968	1968, No. 18
Foreshore Act 1933	1933, No. 12
Gas (Amendment) Act 1987	1987, No. 9
Gas (Interim) (Regulation) Act 2002	2002, No. 10
Gas Act 1976	1976, No. 30
Harbours Act 1996	1996, No. 11
Harbours Acts 1946 to 1976	
Landlord and Tenant (Amendment) Act 1980	1980, No. 10
Lands Clauses Consolidation Act 1845	8 & 9, Vic., c. 18
Local Government Act 2001	2001, No. 37
Maritime Safety Act 2005	2005, No. 11
Merchant Shipping (Investigation of Marine Casualties) Act 2000	2000, No. 14
Mines and Quarries Act 1965	1965, No. 7
Petroleum and Other Minerals Development Act 1960	1960, No. 7
Planning and Development Act 2000	2000, No. 30
Planning and Development (Strategic Infrastructure) Act 2006	2006, No. 27
Residential Tenancies Act 2004	2004, No. 27
Sustainable Energy Act 2002	2002, No. 2
Taxes Consolidation Act 1997	1997, No. 39
Turf Development Act 1998	1998, No. 26



Number 40 of 2006

ENERGY (MISCELLANEOUS PROVISIONS) ACT 2006

REVISED

Updated to 26 July 2017

AN ACT TO AMEND THE LAW RELATING TO ELECTRICITY AND THE REGULATION OF THE ELECTRICITY INDUSTRY AND THE NATURAL GAS INDUSTRY, TO PROVIDE FOR THE ISSUE OF CAPITAL STOCK IN BORD GÁIS ÉIREANN, TO PROVIDE FOR THE AMENDMENT OF THE TURF DEVELOPMENT ACT 1998, TO MAKE PROVISION AS RESPECTS THE EFFECT OF CERTAIN AMENDMENTS OF THE PLANNING AND DEVELOPMENT ACT 2000 MADE BY THE PLANNING AND DEVELOPMENT (STRATEGIC INFRASTRUCTURE) ACT 2006, TO PROVIDE FOR THE TREATMENT OF LANDS AFFECTED BY MINES AND FORMER MINES BY THE REHABILITATION OF SUCH LANDS AND FOR THE COMPULSORY ACQUISITION OF LANDS FOR THE PURPOSES OF SUCH REHABILITATION AND TO PROVIDE FOR RELATED MATTERS.

[24th December, 2006]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Annotations

Modifications (not altering text):

- C1** References to “Bord Gáis Éireann” or “The Irish Gas Board” construed (19.06.2014) by *ESB (Electronic Communications Networks) Act 2014* (5/2014), s. 8(1),(2), S.I. No. 286 of 2014.

Change of name of Bord Gáis Éireann to Ervia

8. (1) The name of the body (established by section 7 of the Gas Act 1976) the present name of which is, in the Irish language, Bord Gáis Éireann and, in the English language, The Irish Gas Board, shall, on and from such day as the Minister appoints by order, be Ervia.

(2) References in any enactment, statutory instrument, legal proceedings or any other document to Bord Gáis Éireann or The Irish Gas Board shall, on and from the day appointed under *subsection (1)*, be construed as references to Ervia.

- C2** Application of Act affected (21.09.2011) by *European Communities (Birds and Natural Habitats) Regulations 2011* (S.I. No. 477 of 2011), regs. 42(22), 46(3), 63(2) and sch. 2, in effect as per reg. 1(3).

Screening for Appropriate Assessment and Appropriate Assessment of implications for European Sites

42. ...

(22) Notwithstanding any provision of any statute listed in the Second Schedule that provides for the consent for a plan or project to which this Regulation applies to be obtained by default on the failure of the public authority to provide a response within a specified timescale or otherwise, that provision shall not have effect in respect of any plan or project to which this Regulation applies

...

Review of existing plans

46. ...

(3) For the purposes of this Regulation, a decision, including a decision to adopt or undertake, or give approval for a plan, may include those adopted, undertaken or approved pursuant to any of the enactments set out in the Second Schedule to these Regulations.

...

General provisions regarding licences etc

63. ...

(2) A licence, consent, permission, permit, derogation or other authorisation given under these Regulations or under any of the enactments referred to in the Second Schedule may include conditions requiring compliance with any guideline or code of practice issued under Regulation 71 or such provisions thereof as may be specified in the conditions.

...

SECOND SCHEDULE

Number	Year	Short Title/Citation
...
40	2006	Energy (Miscellaneous Provisions) Act, 2006
...

C3 Functions transferred and references to “Department of Finance” and “Minister for Finance” construed (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), arts. 2, 3, 5 and sch. 1 part 2, in effect as per art. 1(2).

2. (1) The administration and business in connection with the performance of any functions transferred by this Order are transferred to the Department of Public Expenditure and Reform.

(2) References to the Department of Finance contained in any Act or instrument made thereunder and relating to the administration and business transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Public Expenditure and Reform.

3. The functions conferred on the Minister for Finance by or under the provisions of —

(a) the enactments specified in Schedule 1, and

(b) the statutory instruments specified in Schedule 2,

are transferred to the Minister for Public Expenditure and Reform.

...

5. References to the Minister for Finance contained in any Act or instrument under an Act and relating to any functions transferred by this Order shall, from the commencement of this Order, be construed as references to the Minister for Public Expenditure and Reform.

...

Schedule 1

Enactments		
...		
Part 2		
1922 to 2011 Enactments		
Number and Year (1)	Short Title (2)	Provision (3)
...
No. 40 of 2006	Energy (Miscellaneous Provisions) Act, 2006	Sections 25 and 28
...

PART 1

PRELIMINARY AND GENERAL

Short title and commencement.

1.— (1) This Act may be cited as the Energy (Miscellaneous Provisions) Act 2006.

(2) Sections 4, 6, 8, 11 to 14 and 19 of this Act shall come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

Annotations

Editorial Notes:

E1 Power pursuant to section exercised (29.07.2009) by *Energy (Miscellaneous Provisions) Act 2006 (Commencement of Section 6) Order 2009* (S.I. No. 298 of 2009).

2. The 29th day of July, 2009, is hereby appointed as the day on which Section 6 of the Energy (Miscellaneous Provisions) Act 2006 (No. 40 of 2006) comes into operation.

E2 Power pursuant to section exercised (29.06.2009) by *Energy (Miscellaneous Provisions) Act 2006 (Section 13) (Commencement of Remaining Provisions) Order 2009* (S.I. No. 238 of 2009).

2. The 29th day of June 2009 is appointed as the day on which section 13 of the Energy (Miscellaneous Provisions) Act 2006 (No. 40 of 2006) comes into operation in so far as it relates to subsections (3) and (4) of section 9G (inserted by the said section 13) of the Electricity Regulation Act 1999 (No. 23 of 1999).

E3 Power pursuant to section exercised (12.03.2008) by *Energy (Miscellaneous Provisions) Act 2006 (Commencement of Certain Provisions) Order 2008* (S.I. No. 68 of 2008).

2. (1) The 12th day of March 2008 is appointed as the day on which sections 4, 11 and 12 and, subject to paragraph (2) of this Article, section 13 of the Energy (Miscellaneous Provisions) Act 2006 (No. 40 of 2006) come into operation.

(2) Section 13 of the Energy (Miscellaneous Provisions) Act 2006 comes into operation by virtue of paragraph (1) except in so far as it relates to subsections (3) and (4) of section 9G (inserted by the said section 13) of the Electricity Regulation Act 1999 (No. 23 of 1999).

E4 Power pursuant to section exercised (1.07.2007) by *Energy (Miscellaneous Provisions) Act 2006 (Commencement of Section 19) Order 2007* (S.I. No. 292 of 2007).

2. The 1st day of July, 2007, is hereby appointed as the day on which Section 19 of the Energy (Miscellaneous Provisions) Act 2006 (No. 40 of 2006), shall come into operation.

E5 Power pursuant to section exercised (23.05.2007) by Energy (Miscellaneous Provisions) Act 2006 (Commencement of Section 8) Order 2007 (S.I. No. 266 of 2007).

2. The 23rd day May, 2007, is hereby appointed as the day on which Section 8 of the Energy (Miscellaneous Provisions) Act 2006 (No. 40 of 2006), shall come into operation.

Definitions.

2.— In this Act—

“Act of 1976” means the Gas Act 1976;

“Act of 1999” means the Electricity Regulation Act 1999;

“Act of 2001” means the Electricity (Supply) (Amendment) Act 2001;

“Minister” means the Minister for Communications, Marine and Natural Resources.

PART 2

AMENDMENTS TO ACT OF 1999

Functions of Commission regarding all-island energy market.

3.— The Act of 1999 is amended by the insertion after section 9A of the following section:

“Functions of Commission regarding all-island energy market.

9B.— (1) It shall be, and be deemed always to have been, a function of the Commission to participate in the development of an all-island energy market, including the preparation of proposals and the provision of advice to the Minister in regard to any part or aspect of the establishment, management and operation of such a market.

(2) The Commission may take all actions it considers necessary, in carrying out its function under subsection (1).

(3) The powers conferred on the Commission by subsection (1) include the power to direct—

- (a) a person holding a licence under section 14(1)(e) or ESB National Grid to negotiate with any person holding an analogous licence as respects any part of Northern Ireland and to enter into an agreement with any such person to establish an entity to be known as a single market operator,
- (b) the holder of a licence under section 14(1)(e) or ESB National Grid to take such steps as are necessary to ensure the proper functioning and operation of the system of trading in electricity for which it is responsible on foot of a direction from the Commission under this Act or the European Communities (Internal Market in Electricity) Regulations 2000 and 2005, and
- (c) the holder of a licence granted under section 14 or a person who stands licensed to generate electricity by virtue of subsection (1A) or (1B) of section 14 to comply with any directions, codes or rules made by the Commission under this Act or the European Communities (Internal Market in Electricity) Regulations 2000 and 2005.

(4) The power of the Commission under subsection (3) includes the power to direct that necessary expenditure be undertaken by the holder of a licence under section 14(1)(e) or ESB National Grid.

(5) Without prejudice to the generality of subsection (2) the Commission in exercising its powers under this section may—

- (a) liaise,
- (b) co-operate, or
- (c) enter into arrangements including arrangements involving—
 - (i) the sharing of information, or
 - (ii) the sharing of expenditure,

with a relevant person in any other Member State of the European Union and in particular the Northern Ireland Authority for Energy Regulation.

(6) In this section—

‘all-island energy market’ means a market in energy for the island of Ireland resulting from the integration of the equivalent markets in Ireland with those of Northern Ireland;

‘island of Ireland’ includes its islands and seas;

‘ESB National Grid’ means the National Grid Business Unit of the Board performing the functions of the transmission system operator under this Act and the European Communities (Internal Market in Electricity) Regulations 2000 and 2005, pending the granting of a licence under section 14(1)(e);

‘market in energy’ includes a market in respect of—

- (a) the generation, supply, transmission, distribution and trading, including the export or import, of electricity, including electricity generated from renewable sources,
- (b) the storage, supply, transmission, distribution and trading, including the export and import, of natural gas,
- (c) energy efficiency services,
- (d) energy research and development, and
- (e) other sustainable energy activities;

‘relevant person’ means—

- (a) any person exercising a function in relation to an energy market which corresponds to any of the functions of the Commission or the Minister under—
 - (i) the Electricity and Gas Regulation Acts 1999 to 2002,
 - (ii) European Communities (Internal Market in Electricity) Regulations 2000 and 2005,

and

- (b) any person engaged in—
 - (i) generation, supply, including the export or import, transmission or distribution of electricity, or

- (ii) storage, supply including the export or import, transmission or distribution of natural gas;

‘single market operator’ means an entity established pursuant to an agreement made under subsection (3) for the purpose of establishing and operating a system of contracts and arrangements (including such rights and obligations as appear to the Commission to be necessary) for trading in electricity on the island of Ireland.”.

Functions of Commission regarding electrical safety and regulation of electrical contractors.

4.— The Act of 1999 is amended by the insertion after section 9B (inserted by section 3) of the following sections—

“Function of Commission relating to electrical safety.

9C.— It shall be a function of the Commission to regulate the activities of electrical contractors with respect to safety.

Regulation of electrical contractors.

9D.— (1) (a) The Commission may appoint a person or persons to be a designated body for the purposes of this section and such body may be referred to as an Electrical Safety Supervisory Body.

- (b) Where the Commission has not appointed a person or persons to be a designated body, or a designated body is, in the opinion of the Commission, no longer able to carry out its functions under this section, the Commission may, with the consent of the Minister, appoint an employee of the Commission to carry out those functions on a temporary basis.

(2) (a) In determining the number of persons appointed under subsection (1) the Commission shall have regard to the costs likely to be incurred—

- (i) by the Commission in carrying out its functions under this section, and
(ii) by final customers.

- (b) Paragraph 16 of Schedule 1 shall apply to any costs incurred by the Commission in carrying out its functions under this section.

- (c) In paragraph (b) the words ‘any costs incurred by the Commission’ includes any moneys provided by the Commission to a designated body, following its appointment under subsection (1), to facilitate that body in establishing and carrying out its functions.

(3) A person shall not be appointed to be a designated body, or if so appointed shall cease to act as a designated body, if that person is or becomes a trade association or performs representative functions on behalf of persons working in the electrical industry.

(4) A person who does not for the time being stand appointed as a designated body shall not describe himself or herself as an Electrical Safety Supervisory Body or in a manner likely to suggest that such person is a designated body for the purposes of this section.

(5) (a) The Commission shall publish criteria (in this section referred to as ‘the criteria’) relating to—

- (i) electrical safety supervision,
(ii) the safety standards to be achieved and maintained by electrical contractors, and
(iii) the procedures to be operated by a person appointed as a designated body.

- (b) The criteria to be published in connection with paragraph (a) shall include, but shall not be limited to, the following information:
- (i) the procedures to be adopted by a designated body for the registration of its members;
 - (ii) the procedures to be followed by a person applying for membership of a designated body;
 - (iii) the services which a designated body may carry out on behalf of its members to facilitate the performance of its functions;
 - (iv) the standards of training and safety to be achieved and maintained by members of a designated body and the procedures to be followed by a designated body in monitoring such standards;
 - (v) the procedures to be followed by a designated body for the inspection of any work carried out by one of its members, or by a person who is not a registered electrical contractor;
 - (vi) the procedures to be followed by a designated body in connection with the suspension or revocation of the membership of one of its members;
 - (vii) the matters to be covered by a completion certificate in respect of different categories or classes of electrical works and the circumstances in which each such class of certificate shall be used;
 - (viii) the type of accounts to be kept by the designated body, and the manner in which such accounts should be audited;
 - (ix) the method by which the accounts kept under subparagraph (viii) should be published; and
 - (x) the procedures to be followed, and the records to be maintained, by a designated body or its members (where appropriate), in connection with subparagraphs (i) to (ix).
- (c) The Commission may review or amend the criteria as often as it considers necessary.

(6) The Commission shall not appoint a person to be a designated body unless it is satisfied that the person is capable of complying with the criteria, and as respects each person who is a member (in this section referred to as a 'registered electrical contractor') of that designated body that the body has, or will have if appointed, the capability and entitlement to—

- (a) inspect any work carried out by a registered electrical contractor,
- (b) monitor the training and safety standards of a person who is a registered electrical contractor,
- (c) review training undertaken by a person engaged either as an employee or as an independent contractor of a registered electrical contractor,
- (d) issue directions to a registered electrical contractor regarding the training to be given to or undertaken by a class or classes of persons engaged either as employees or as independent contractors,

- (e) suspend the membership of a registered electrical contractor in a designated body where that registered electrical contractor is the subject of an investigation by that body into whether—
 - (i) work carried out by the registered electrical contractor concerned is unsafe or otherwise of an unsatisfactory standard,
 - (ii) the training of employees and independent contractors engaged by the registered electrical contractor concerned is materially inadequate, or
 - (iii) the registered electrical contractor has acted in contravention of the criteria to a material extent,
- (f) suspend or revoke the membership of a registered electrical contractor in the designated body where that body is satisfied that any of the matters specified in subparagraphs (i) to (iii) of paragraph (e) apply as respects the contractor concerned.

(7) (a) Where a designated body decides to suspend or revoke the membership of a registered electrical contractor in that body, such designated body shall inform, in writing, both—

- (i) the Commission, and
- (ii) the registered electrical contractor concerned,

of its decision to suspend or revoke the membership of a registered electrical contractor in the designated body.

- (b) A registered electrical contractor, the subject of a decision under paragraph (a), may submit an appeal, in writing, of the decision to the Commission within 28 days of being informed of the decision.

(8) (a) The Commission shall appoint one or more persons ('Appeals Officer') to—

- (i) duly consider, and
- (ii) furnish a report to the Commission on,

any appeal submitted by a registered electrical contractor relating to a decision made by the designated body to suspend or revoke his or her membership in the designated body.

- (b) The Commission shall have regard to the report of the Appeals Officer under paragraph (a) and shall advise the designated body, the Appeals Officer and the registered electrical contractor concerned of its decision to confirm, vary or set aside the decision of the designated body concerned.

(c) An appeal shall not be considered under this subsection if—

- (i) it relates to any matter the subject of proceedings before a court or other tribunal, until those proceedings are determined, or
- (ii) it is not submitted to the Commission within 28 days of the registered electrical contractor concerned being informed of the decision.

(9) Notwithstanding the generality of subsections (7) and (8), the Commission may specify the procedures to be followed by:

- (a) the Appeals Officer in considering the appeal;
- (b) the Appeals Officer in drafting his or her report to the Commission;
- (c) the designated body when suspending or revoking the membership of a registered electrical contractor; and
- (d) a registered electrical contractor who is the subject of a decision by the designated body to suspend or revoke his or her membership in the designated body,

in the criteria published under subsection (5).

(10) (a) The tariff of fees and charges imposed by a designated body relating to—

- (i) membership of an electrical contractor in that body,
- (ii) registration of an electrical contractor as a registered electrical contractor,
- (iii) inspections of electrical works, and
- (iv) any service provided to a member of a designated body by or on behalf of that body,

shall be subject to the approval of the Commission.

(b) All expenses and costs incurred by a designated body in carrying out any of its functions under this section shall be defrayed by the designated body out of funds at its disposal which are obtained in accordance with paragraph (a).

(11) A person may not be a member of more than one designated body.

(12) Where a registered electrical contractor carries out electrical works, the works shall be carried out in accordance with the safety requirements approved by the Commission from time to time.

(13) Where a registered electrical contractor carries out electrical works, which by reason of a determination by the Commission under subsection (27) are specified works, the registered electrical contractor concerned shall issue a completion certificate to the person who requested the works to be carried out.

(14) Where specified works are carried out by an electrical contractor who is not a member of a designated body, the person on whose behalf the specified works are being carried out shall request a designated body to arrange for the carrying out of an inspection of the works and, if the works meet the safety requirements approved by the Commission, for the issue of a completion certificate.

(15) A designated body which receives a request under subsection (14) shall arrange for the carrying out of the inspection as soon as practicable and, if appropriate, the issue of a completion certificate.

(16) Subject to subsection (17), a designated body shall be entitled to payment of fees and charges in respect of the inspection of the works, and those fees and charges shall be no greater than is set out in the tariff of fees and charges published by the designated body concerned.

(17) The tariff of fees and charges referred to in subsection (16) shall not have effect until approved by the Commission, which approval shall not be given unless the Commission is satisfied that the fees and charges are calculated on the basis of the reasonable costs attributable to the carrying out of inspections under this section.

(18) The Commission shall specify a form of completion certificate to be used for the purposes of this section and may specify different forms for different circumstances or different classes of electrical work and may make provision relating to—

- (a) procedures to be followed, and
- (b) records to be maintained,

by registered electrical contractors and a designated body in connection with the issue of such certificates.

(19) (a) The Commission may conduct an inspection or audit of a designated body to verify compliance by the designated body with the requirements of this section, the terms and conditions of appointment and the criteria of the Commission.

- (b) The Commission may appoint a person to assist it in performing inspections or audits referred to in paragraph (a).

(20) The Commission may determine the appointment of a designated body—

- (a) in accordance with the terms and conditions of the appointment,
- (b) where the Commission is of the opinion that an act or default by the designated body is a cause of serious danger to the public, with immediate effect, or
- (c) where it is, in the opinion of the Commission, in the interests of consumers that the appointment be determined, and paragraph (b) does not apply, on giving not less than 3 months notice or such shorter period as may be specified in the terms and conditions of appointment in that respect.

(21) The Commission may appoint a person, including a person who is an employee of a designated body, to be an authorised officer for the purposes of carrying out inspections of electrical work—

- (a) of registered electrical contractors on any land where the authorised officer believes such work is being or has been carried out by such a contractor, or
- (b) which has been the subject of a completion certificate,

but an authorised officer who is an employee of a designated body shall not exercise the powers conferred under this section as respects the work of a person who is a member of a designated body other than the designated body by which the authorised officer concerned is employed.

(22) A person appointed to be an authorised officer under subsection (21) shall on his or her appointment be furnished with a certificate of his or her appointment, and when exercising a power conferred by this section shall, if requested by any person thereby affected, produce such certificate to that person for inspection.

(23) A registered electrical contractor and every employee or independent contractor of a registered electrical contractor shall give all reasonable assistance to—

- (a) an authorised officer in the exercise of his or her powers under this section, and
- (b) the Commission in exercising its powers under subsection (19) including a person assisting the Commission pursuant to subsection (19).

(24) A person shall not obstruct—

- (a) an authorised officer performing any function he or she is authorised to exercise or perform under this section,
- (b) the Commission in exercising its powers under this section, or
- (c) a person assisting the Commission pursuant to subsection (19).

(25) A person shall not describe himself or herself as a registered electrical contractor or in a manner likely to suggest that such person is a registered electrical contractor unless that person is for the time being a member of a designated body.

(26) A person who contravenes subsection (4), (24) or (25) is guilty of an offence and liable—

- (a) on summary conviction to a fine not exceeding €5,000 or a term of imprisonment not exceeding 6 months or to both, or
- (b) on conviction on indictment to a fine not exceeding €15,000 or a term of imprisonment not exceeding 3 years or to both.

(27) The Commission, having consulted with such persons as it considers appropriate, may determine that a class or classes of electrical works be specified works.

(28) In this section—

‘completion certificate’ means a certificate the form of which has been specified by the Commission under subsection (18);

‘designated body’ means a person appointed under subsection (1) to be a designated body for the purposes of this section;

‘specified works’ means such class or classes of works as have been determined to be such by the Commission in accordance with subsection (27).

Designated electrical works.

9E.— (1) The Commission, having consulted with such persons as it considers appropriate, and with the consent of the Minister, may by regulations designate a class or classes of electrical works to be designated electrical works.

(2) Where the Commission proposes to make regulations under subsection (1) the Minister, where he or she has approved the draft of such regulations, shall cause a draft of the regulations to be laid before each House of the Oireachtas and the regulations shall not be made until a resolution approving of the draft has been passed by each such House.

(3) A person shall not carry out electrical works which are designated electrical works unless that person is a registered electrical contractor.

(4) A person who contravenes subsection (3) is guilty of an offence and liable—

- (a) on summary conviction to a fine not exceeding €5,000 or a term of imprisonment not exceeding 6 months or to both, or
- (b) on conviction on indictment to a fine not exceeding €15,000 or a term of imprisonment not exceeding 3 years or to both.”.

Licences under Act of 1999.

5.— The Act of 1999 is amended in section 14(1) by the substitution for paragraphs (c) and (d) of the following paragraphs:

“(c) to supply electricity to final customers which is generated by that supplier or purchased by that supplier and which electricity is

generated, in whole or in part, using renewable, sustainable or alternative forms of energy, in accordance with any trading arrangements provided for in regulations made under section 9(1)(d),

- (d) to supply electricity to final customers which is generated by that supplier or purchased by that supplier and which electricity is generated, in whole or in part, using combined heat and power, in accordance with any trading arrangements provided for in regulations made from time to time by the Commission under section 9(1)(d),”.

Combined heat and power.

6.— The Act of 1999 is amended—

(a) in subsection (1) of section 2—

- (i) by the substitution for the definition of “combined heat and power” of the following:

“ ‘combined heat and power’ means the simultaneous generation in one process of—

(a) thermal energy and electrical energy,

(b) thermal energy and mechanical energy, or

(c) thermal, electrical and mechanical energy;”,

and

- (ii) by the insertion of the following new definitions in alphabetical order:

“‘economically justifiable demand’ means the demand that does not exceed the needs for heat or cooling and which would otherwise be satisfied at market conditions by energy generation processes other than cogeneration;

‘electricity production from combined heat and power’ means electricity produced from combined heat and power calculated in accordance with section 7;

‘high efficiency combined heat and power’ means combined heat and power production which on an annual basis—

(a) in the case of small scale combined heat and power and micro-combined heat and power, achieves primary energy savings calculated in accordance with paragraphs 3 and 4 of Schedule 3, and

(b) in the case of all other combined heat and power, achieves primary energy savings calculated in accordance with paragraphs 3 and 4 of Schedule 3 of at least 10 per cent compared with the references for separate production of heat and electricity;

‘micro-combined heat and power unit’ means a combined heat and power unit with a maximum capacity of less than 50 kWe;

‘small scale combined heat and power’ means combined heat and power units with an installed capacity greater than 50 kWe and less than 1 MWe;

‘useful heat’ means heat produced in a cogeneration process to satisfy an economically justifiable demand for heat or cooling.”,

- (b) by the substitution of the following section for section 7—

“Combined heat and power.

7.— (1) Electricity production from combined heat and power shall be calculated in accordance with paragraphs 1 and 2 of Schedule 3.

(2) The Minister may by order appoint a person to calculate and certify the actual power to heat ratios of such classes of combined heat and power units as are specified in the order, and such person shall have such powers and duties as are specified in the order.

(3) A person appointed under subsection (2) shall calculate the actual power to heat ratios of combined heat and power units in accordance with this Act and the Directive.

(4) The Minister may by order specify power to heat ratio default values for any technology or technologies which satisfy the definition of combined heat and power, provided that—

(a) in respect of the technologies referred to in paragraphs (a), (b), (c), (d) and (e) of Annex I of the Directive, such default values shall be consistent with those specified in paragraph (b) of Annex II of the Directive,

(b) in respect of technologies other than those referred to in paragraph (a) of this subsection, such default values shall be notified to the European Commission.

(5) The relative amount of primary energy savings provided by combined heat and power production shall be calculated in accordance with paragraphs 3 and 4 of Schedule 3.

(6) Subject to subsection (7) the Minister may by order determine efficiency reference values for separate electricity and heat production, which values shall be determined in accordance with the principles specified in paragraph 5 of Schedule 3, and the Minister may amend or revoke an order made under this subsection.

(7) Where the European Commission has, in accordance with the procedure referred to in Article 14(2) of the Directive, established detailed guidelines for the implementation and application of Annex II of the Directive—

(a) the Minister shall not make an order under subsection (6) in relation to matters which are the subject of such guidelines,

(b) the efficiency reference values determined by the Minister in an order made under this subsection shall cease to have effect, and

(c) those guidelines shall apply for the purpose of determining the power to heat ratio of electricity produced from combined heat and power.

(8) The Minister may by order amend or revoke an order made under this section including an order made under this subsection.

(9) The provisions of this section and Schedule 3 apply to installations or generating stations whether first licensed before or after the coming into operation of *section 6* of the *Energy (Miscellaneous Provisions) Act 2006*.

(10) In this section ‘Directive’ means Directive 2004/8/EC of 11 February 2004.¹”,

¹O.J. L52, 21.2.2004, p.50

(c) in section 14(1) by the substitution for paragraph (d) (inserted by section 5) of the following paragraph:

“(d) to supply electricity to final customers which is generated by that supplier or purchased by that supplier, and which electricity is generated, in whole or in part, using high efficiency combined heat and power, in accordance with the trading arrangements provided for in regulations made by the Commission under F1[[section 9\(1\)\(d\)](#) or [section 9BA](#)],”

and

(d) by the insertion after Schedule 2 (inserted by the Sustainable Energy Act 2002) of the matter in the Schedule to this Act as Schedule 3 to the Act of 1999.

Annotations

Amendments:

- F1** Substituted (18.06.2007) by *Electricity Regulation (Amendment) (Single Electricity Market) Act 2007* (5/2007), s. 20, S.I. No. 287 of 2007.

Policy directions to Commission.

7.— The Act of 1999 is amended by the insertion after section 10 of the following section:

“Policy directions to Commission.

10A.— (1) (a) In the interests of the proper and effective regulation of the electricity and natural gas markets and the formulation of policy applicable to such proper and effective regulation, the Minister may give such general policy directions to the Commission, as he or she considers appropriate, to be followed by the Commission in the exercise of its functions.

(b) Notwithstanding the generality of paragraph (a), such general policy directions may have regard to the following issues—

- (i) security of energy supply,
- (ii) sustainability of energy supply,
- (iii) competitiveness of energy supply, or
- (iv) such other matter which the Minister considers appropriate.

(2) The Commission shall comply with any direction given under subsection (1), and shall report to the Minister on the implementation (including the costs of such implementation) of any directions given under subsection (1) in the report prepared in accordance with paragraph 25(b) of Schedule 1 to this Act.

(3) Before giving a direction under subsection (1), the Minister shall—

- (a) provide a draft of the proposed direction to—
 - (i) the Commission,
 - (ii) the Joint Committee referred to in paragraph 26 of Schedule 1 of this Act, and
 - (iii) any other person the Minister deems appropriate,

inviting them, in writing, to make representations on the proposal and specifying the period (being not less than 30 days from the giving of the draft to the Commission or such publication, whichever is the later) within which representations relating to the proposal may be made by them, and

(b) publish a draft of the proposed policy direction to the Commission, which shall—

(i) include details of the proposed policy direction, including the reasons for giving the direction, and

(ii) specifying the period (being not less than 30 days from the giving of the draft to the Commission or such publication, whichever is the later) within which representations relating to the proposal may be made by interested parties.

(4) The Minister, having considered any representations made under subsection (3), may give the direction under subsection (1), with or without amendment.

(5) Where, in the opinion of the Minister, a direction which the Minister proposes to give to the Commission under subsection (1) relates or may relate to the functions of another Minister of the Government, the Minister shall consult with that Minister of the Government prior to the carrying out of any obligation imposed on him or her under subsection (3).

(6) The Minister shall not give a direction under subsection (1) in respect of—

(a) a person who has applied for, or holds a licence, authorisation or consent, or

(b) a person to whom a licence, authorisation or consent may be granted by the Commission, or

(c) the performance of the functions of the Commission in relation to individual energy undertakings or persons.

(7) Where the Minister gives a direction under subsection (1), a notice of such direction and details thereof, including reasons for giving the direction, shall be published in the *Iris Oifigiúil*.

Interconnectors. **8.—** (1) Subsection (1) of section 2 of the Act of 1999 is amended by the insertion in the definition of “transmission” of “subject to section 2A,” before “in relation to electricity”.

(2) The Act of 1999 is amended by the insertion of the following section after section 2:

“Position of interconnectors as respects transmission system.

2A.— (1) An interconnector owned by the Board shall be part of the transmission system.

(2) Subject to subsection (3) an interconnector owned by a person other than the Board shall not be part of the transmission system.

(3) Notwithstanding subsection (2), an interconnector owned by a person other than the Board shall be considered to be part of the transmission system for the purposes of calculating charges and imposing charges for use of the transmission system.”

(3) Subsection (1) of section 14 of the Act of 1999 is amended—

- (a) in paragraph (g) by the substitution of “distribution system operator,” for “distribution system operator, or”,
- (b) in paragraph (h) by the substitution of “public electricity supplier, or” for “public electricity supplier”, and
- (c) by the insertion after paragraph (h) of the following paragraph:

“(i) to transport electricity across and maintain an interconnector,”.

(4) Section 16 of the Act of 1999 is amended—

- (a) by the substitution for subsection (1) of the following subsection:

“(1) A person shall not—

- (a) construct or reconstruct a generating station for the purpose of supply to final customers, or
- (b) construct an interconnector,

unless an appropriate authorisation has been granted to the person by the Commission.”.

- (b) by the substitution for subsection (3) of the following subsection:

“(3) Subject to section 17, the Commission may grant or may refuse to grant to any person an authorisation—

- (a) to construct or reconstruct a generating station, or,
- (b) to construct an interconnector,

and where the Commission grants such an authorisation, that authorisation shall be subject to such terms and conditions as may be specified in the authorisation, including, as respects a generating station, the generating capacity of such station.”.

(5) The Act of 1999 is amended by the insertion after section 16 of the following section:

“Construction of an interconnector.

16A.— The Commission may, with the consent of the Minister, secure the construction of an interconnector or interconnectors by one or more of the following means:

- (a) a competitive tender;
- (b) an authorisation granted to a person without a prior competitive tender where the person demonstrates, to the satisfaction of the Commission, that the granting of an authorisation, subject to such conditions as the Commission deems necessary and appropriate, is in the long term interests of final customers; or
- (c) requesting the transmission system operator to provide for the construction of an interconnector in its development plan.”.

(6) Section 18 of the Act of 1999 is amended in subsection (1) by the insertion of “to construct or reconstruct a generating station” after “authorisation”.

(7) The Act of 1999 is amended by the insertion after section 34 of the following section:

“Terms for access to interconnector.

34A.— (1) Subject to subsection (3) the holder of a licence under section 14(1)(i) (in this section referred to as the ‘interconnector operator’) shall offer access to the interconnector concerned on the basis of published non-discriminatory terms which shall be subject to the approval of and directions given by the Commission.

(2) Without prejudice to the generality of subsection (1) the Commission may give directions to the interconnector operator which provide for—

- (a) the matters to be specified in an agreement for use of the interconnector,
- (b) the terms and conditions upon which an offer for access to the interconnector is made,
- (c) the basis upon which charges may be made for access to the interconnector,
- (d) the terms and conditions upon which applications for access are to be made and the period of time within which an offer or refusal pursuant to an application is to be made by the interconnector operator, and
- (e) any other matters which the Commission considers necessary or expedient for the purpose of making an offer of access to the interconnector,

and the interconnector operator shall comply with directions given by the Commission under this section within such period of time as may be specified by the Commission.

(3) The interconnector operator shall not be required under subsection (1) to enter into an agreement where—

- (a) it has demonstrated to the satisfaction of the Commission that it is not in the public interest to do so,
- (b) to enter into an agreement under this section would be likely to involve the interconnector operator—
 - (i) in a breach of this Act,
 - (ii) in a breach of regulations made under this Act,
 - (iii) in a breach of the grid code or distribution code, or
 - (iv) in a breach of the conditions of any licence or authorisation granted to the interconnector operator under this Act.

(4) Where the interconnector operator refuses to enter into an agreement under this section the interconnector operator shall serve notice on the applicant of the reasons for such refusal.

(5) Any dispute between the interconnector operator and a person who is, or claims to be, a person to whom the interconnector operator is obliged to make an offer of access to the interconnector (and whether the dispute relates to the making of an offer, the terms offered, the proposed charge or otherwise)—

- (a) where the offer is made by the interconnector operator, or
- (b) where an offer is refused by the interconnector operator,

may, upon the application of that person, be determined by the Commission and the interconnector operator shall comply with and be bound by any such determination.”.

Emergency measures.

9.— The Act of 1999 is amended by the insertion after Part VI of the following part:

“PART VIA

EMERGENCY MEASURES IN EVENT OF SUDDEN CRISIS

Emergency measures.

40A.— (1) In the event of a sudden crisis in the energy market and where the physical safety or security of persons, apparatus or installations, or the integrity of the natural gas or electricity transmission system or the natural gas or electricity distribution system is threatened the Minister may by order direct—

- (a) the Commission,
- (b) the holder of a licence under section 14,
- (c) a person referred to in section 10A(2)(b)(i), (ii), (iii) or (iv) of the Gas Act 1976,

to take such safeguard measures as the Minister considers necessary, and the person to whom the order is directed shall comply with the direction.

(2) In making an order under this section the Minister shall have regard to the objective that the measures subject to a direction under the order—

- (a) should cause the least possible disturbance to the functioning of the internal market in gas or electricity, and
- (b) are not wider in scope than is strictly necessary to remedy the sudden difficulties.

(3) The Minister may by order, amend or revoke an order made under this section, including an order under this subsection.”.

Amendment of Schedule to Act of 1999.

10.— (1) The Act of 1999 is amended—

- (a) by the renumbering of the Schedule to that Act as Schedule 1 to that Act, and
- (b) in section 8(3) by substituting “Schedule 1” for “The Schedule”.

(2) Schedule 1 to the Act of 1999 (as renumbered by *subsection (1)*) is amended—

- (a) in paragraph 2, by the deletion of “, to hold office in a full-time capacity for a period of not less than three and not more than five years”,
- (b) by the insertion, after paragraph 2 of the following paragraphs:

“2A. Where the chairperson appointed pursuant to paragraph 2 is not available to perform his or her duties, the Minister may appoint another member of the Commission to be the acting chairperson of the Commission for a specified period not exceeding 6 months, and a person so appointed shall perform the duties and functions of the chairperson.

2B. Where there is more than one member of the Commission, each member of the Commission, including the chairperson, shall have a vote and any matter on which a decision is to be taken by the Commission shall be determined by a majority of the votes of the members of the Commission present when the vote is called and voting on the question and in the case of an equal division of votes the chairperson of the Commission appointed pursuant to paragraph 2 or 2A shall, if present and voting, have a second and casting vote.”.

- (c) in paragraph 3 by the substitution of “A member of the Commission whose term of office expires” for “A member of the Commission, including the chairperson, whose term of office expires”,

(d) in paragraph 4 by the substitution of “two terms of office as a member” for “two terms of office”,

and

(e) in paragraph 25—

(i) by the substitution of the following for subparagraph (b):

“(b) submit accounts kept under subparagraph (a) in respect of each year to the Comptroller and Auditor General for audit and those accounts when so audited shall, together with—

(i) the report of the Comptroller and Auditor General thereon, and

(ii) a report of the Commission to the Minister in relation to the performance of its functions in the previous year,

be presented within 6 months of the end of the financial year to the Minister, who shall cause copies of the accounts, the report of the Comptroller and Auditor General, and the report of the Commission in relation to its functions to be laid before each House of the Oireachtas, and”,

and

(ii) by the substitution for subparagraph (c) of the following:

“(c) not later than 30 November in each year make a report to the Minister in relation to its proposed work programme for the following year and the Minister shall cause copies of the report to be laid before each House of the Oireachtas as soon as practicable.”.

PART 3

NATURAL GAS SAFETY

Amendment of section 2 of Act of 1999.

11.— Section 2 of the Act of 1999 is amended in subsection (1) by the insertion of the following definition after the definition of “Minister”:

“ ‘natural gas fitting’ means any appliance, apparatus or other thing including associated pipework and flueing which is used or designed to be used by—

(a) a domestic customer, or

(b) such class or classes of industrial or commercial customer as the Commission may specify from time to time,

in connection with the consumption or use of natural gas whether the appliance, apparatus or thing is the property of a natural gas undertaking or otherwise;”.

Functions of Commission regarding natural gas safety.

12.— Section 9 of the Act of 1999 is amended—

(a) in subsection (1) by the insertion of the following paragraphs after paragraph (e):

“(ea) to regulate the activities of natural gas undertakings and natural gas installers, with respect to safety,

(eb) to promote the safety of natural gas customers and the public generally as respects the supply, storage, transmission, distribution and use of natural gas (excluding such activities carried

out at upstream pipelines or facilities except where such pipeline or facility is engaged in the storage of natural gas),

(ec) to consult with The National Standards Authority of Ireland regarding standards and specifications relating to gas safety.”,

(b) by the insertion, after subsection (1F) of the following subsections:

“(1G) (a) In carrying out its functions under subsection (1)(ea) the Commission shall, having consulted with the Minister, establish and implement a natural gas safety regulatory framework, and report annually to the Minister on the functioning of such framework.

(b) The framework established under paragraph (a) shall include—

(i) a system for the inspection and testing of all natural gas transmission and distribution pipelines, storage and LNG facilities to an extent and at a frequency specified in the framework,

(ii) a system for the regulation, certification, ongoing inspection of the work and assessment of the competence of individual trained natural gas installers,

(iii) procedures for the investigation of complaints regarding the competence of any particular natural gas installer,

(iv) procedures for the investigation of any incidents involving natural gas which in the opinion of the Commission warrant such investigation,

(v) procedures relating to the making of a report to the Minister in respect of an investigation under subparagraph (iv),

(vi) any other matter considered necessary by the Commission.

(c) The Commission may review or amend the framework referred to in paragraph (a) as often as it considers necessary.

(1H) (a) In carrying out its functions under paragraphs (ea) and (eb) of subsection (1) the Commission may require natural gas undertakings to regularly advise and provide information to their final customers and the public as respects—

(i) best practice in relation to the safe use of natural gas and on the operation and maintenance of natural gas fittings, and

(ii) the detection and reporting of natural gas leaks and other faults in natural gas fittings,

in such manner as the Commission may, from time to time, direct.

(b) Without prejudice to the generality of paragraph (a), the Commission may direct a natural gas undertaking to engage in, either on its own or in concert with any other natural gas undertaking (whether or not such other undertaking operates within the State), campaigns promoting natural gas safety, which campaigns shall take such form as the Commission may specify in its direction and each natural gas undertaking concerned shall comply with any such direction.”.

Amendment of Act of 1999 relating to gas safety and gas installers.

13.— The Act of 1999 is amended by the insertion after section 9E (inserted by section 4) of the following sections:

“Regulation of gas installers.

9F.— (1) (a) The Commission may appoint a person to be the designated body for the purposes of this section and such body may be referred to as a Gas Safety Supervisory Body.

(b) Where the Commission has not appointed a person to be the designated body, or the designated body is, in the opinion of the Commission, no longer able to carry out its functions under this section, the Commission may, with the consent of the Minister, appoint an employee of the Commission to carry out those functions on a temporary basis.

(2) (a) In appointing a person to be the designated body in accordance with subsection (1) the Commission shall have regard to the costs likely to be incurred—

(i) by the Commission in carrying out its functions under this section, and

(ii) by final customers.

(b) Paragraph 16 of Schedule 1 shall apply to any costs incurred by the Commission in carrying out its functions under this section.

(c) In paragraph (b) the words ‘any costs incurred by the Commission’ includes any moneys provided by the Commission to the designated body, following its appointment under subsection (1), to facilitate that body in establishing and carrying out its functions.

(3) A person shall not be appointed to be the designated body, or if so appointed shall cease to act as the designated body, if that person is or becomes a trade association or performs representative functions on behalf of persons working in the gas industry.

(4) A person who does not for the time being stand appointed as the designated body shall not describe himself or herself as a Gas Safety Supervisory Body or in a manner likely to suggest that such person is the designated body for the purposes of this section.

(5) (a) The Commission shall publish criteria (in this section referred to as ‘the criteria’) relating to—

(i) gas safety supervision,

(ii) the safety standards to be achieved and maintained by gas installers, and

(iii) the procedures to be operated by a person appointed as the designated body.

(b) The criteria document to be published in connection with paragraph (a) shall include, but shall not be limited to, the following information:

(i) the procedures to be adopted by the designated body for the registration of its members;

(ii) the procedures to be followed by a person applying for membership of the designated body;

(iii) the services which the designated body may carry out on behalf of its members;

- (iv) the standards of training and safety to be achieved and maintained by members of the designated body and the procedures to be followed by the designated body in monitoring such standards;
 - (v) the procedures to be followed by the designated body for the inspection of any work carried out by one of its members;
 - (vi) the procedures to be followed by the designated body in connection with the suspension or revocation of the membership of one of its members;
 - (vii) the matters to be covered by a completion certificate in respect of different categories or classes of gas works and the circumstances in which each such class of certificate shall be used;
 - (viii) the type of accounts to be kept by the designated body, and the manner in which such accounts should be audited;
 - (ix) the method by which the accounts kept under subparagraph (viii) should be published; and
 - (x) the procedures to be followed, and the records to be maintained, by the designated body or its members (where appropriate), in connection with subparagraphs (i) to (ix).
- (c) The Commission may review or amend the criteria as often as it considers necessary.

(6) The Commission shall not appoint a person to be the designated body unless it is satisfied that the person is capable of complying with the criteria, and as respects each person who is a member (in this section referred to as a 'registered gas installer') of the designated body that the body has, or will have if appointed, the capability and entitlement to—

- (a) inspect any work carried out by a registered gas installer,
- (b) monitor the training and standards of a person who is a registered gas installer,
- (c) suspend the membership of a registered gas installer in the designated body where that registered gas installer is the subject of an investigation by that body into whether—
 - (i) work carried out by the registered gas installer concerned is unsafe or otherwise of an unsatisfactory standard, or
 - (ii) the registered gas installer concerned has acted in contravention of the criteria to a material extent,
- (d) suspend or revoke the membership of a registered gas installer in the designated body where the body has established that any of the matters specified in subparagraphs (i) or (ii) of paragraph (c) apply as respects the installer concerned.

(7) (a) Where the designated body decides to suspend or revoke the membership of a registered gas installer in the body, the designated body shall inform, in writing, both—

- (i) the Commission, and
- (ii) the registered gas installer concerned,

of its decision to suspend or revoke the membership of a registered gas installer in the designated body.

(b) A registered gas installer, the subject of a decision under paragraph (a), may submit an appeal, in writing, of the decision to the Commission within 28 days of being informed of the decision.

(8) (a) The Commission shall appoint one or more persons ('Appeals Officer') to—

(i) duly consider, and

(ii) furnish a report to the Commission on,

any appeal submitted by a registered gas installer relating to a decision made by the designated body to suspend or revoke his or her membership in the designated body.

(b) The Commission shall have regard to the report of the Appeals Officer under paragraph (a) and shall advise the designated body, the Appeals Officer and the registered gas installer concerned of its decision to confirm, vary or set aside the decision of the body.

(c) An appeal shall not be considered under this subsection if—

(i) it relates to any matter the subject of proceedings before a court or other tribunal, until those proceedings are determined, or

(ii) it is not submitted to the Commission within 28 days of the registered gas installer concerned being informed of the decision.

(9) Notwithstanding the generality of subsections (7) and (8), the Commission may specify the procedures to be followed by—

(a) the Appeals Officer in considering the appeal,

(b) the Appeals Officer in drafting his or her report to the Commission,

(c) the designated body when suspending or revoking the membership of a registered gas installer, and

(d) a registered gas installer who is the subject of a decision by the designated body to revoke his or her membership in the designated body,

in the criteria published under subsection (5).

(10) (a) The tariff of fees and charges imposed by the designated body relating to—

(i) membership of a gas installer in the body,

(ii) registration of a gas installer as a registered gas installer,

(iii) inspections of gas works, and

(iv) any service provided to a member of the designated body by or on behalf of the body,

shall be subject to the approval of the Commission.

(b) The designated body may impose fees and charges under paragraph (a) of different amounts in respect of different categories of

membership, registration or service as the Commission may specify in the criteria.

- (c) All expenses incurred by the designated body in carrying out any of its functions under this section shall be defrayed by the designated body out of funds at its disposal which are obtained in accordance with paragraph (a).

(11) Where a registered gas installer carries out any gas works, the works shall be carried out in accordance with any safety requirements which the Commission may specify in the criteria.

(12) Where a registered gas installer carries out any gas works, the registered gas installer concerned shall issue the appropriate completion certificate to the person who requested that the works be carried out.

(13) A person on whose behalf a registered gas installer has carried out any gas works may request, on grounds specified in writing, that the designated body arrange for the carrying out of an inspection of those gas works.

(14) The designated body shall, after it receives a request under subsection (13), arrange for the carrying out of an inspection as soon as practicable, and following its completion, shall advise, in writing, both the registered gas installer who carried out the gas works and the person who requested that the inspection be carried out, as to whether the gas works meet the safety requirements of the Commission.

(15) Subject to subsection (16), the designated body shall be entitled to payment of fees and charges in respect of the inspection of gas works under subsection (14), which fees and charges shall be no greater than is set out in the tariff of fees and charges published by the designated body.

(16) The tariff of fees and charges referred to in subsection (15) shall not have effect until approved by the Commission, which approval shall not be given unless the Commission is satisfied that the fees and charges are calculated on the basis of the reasonable costs attributable to the carrying out of inspections under this section.

(17) The Commission shall specify a form of completion certificate to be used for the purposes of this section and may specify different forms for different circumstances or different classes of work and may make provision relating to—

- (a) procedures to be followed, and
- (b) records to be maintained,

by registered gas installers in connection with the issue of such certificates.

(18) (a) The Commission may conduct an inspection or audit of the designated body to verify compliance by the designated body with the requirements of this section, the terms and conditions of appointment and the criteria of the Commission.

- (b) The Commission may appoint a person to assist it in performing inspections or audits referred to in paragraph (a).

(19) The Commission may determine the appointment of the designated body—

- (a) in accordance with the terms and conditions of the appointment,
- (b) where the Commission is of the opinion that an act or default by the designated body is a cause of serious danger to the public, with immediate effect, or

- (c) where it is, in the opinion of the Commission, in the interests of consumers that the appointment be determined, and paragraph (b) does not apply, on giving not less than 3 months notice or such shorter period as may be specified in the terms and conditions of appointment in that respect.

(20) The Commission may appoint a person, including a person who is an employee of the designated body, to be an authorised officer for the purposes of carrying out inspections of the work—

- (a) of a registered gas installer on any land where the authorised officer believes such work is being or has been carried out by such an installer, or
- (b) which has been the subject of a completion certificate.

(21) A person appointed to be an authorised officer under subsection (20) shall on his or her appointment be furnished with a certificate of his or her appointment, and when exercising a power conferred by this section shall, if requested by any person thereby affected, produce such certificate to that person for inspection.

(22) A registered gas installer and every employee or independent contractor of a registered gas installer shall give all reasonable assistance to—

- (a) an authorised officer in the exercise of his or her powers under this section, and
- (b) the Commission in exercising its powers under subsection (18) including a person assisting the Commission pursuant to subsection (18).

(23) A person shall not obstruct—

- (a) an authorised officer performing any function he or she is authorised to exercise or perform under this section,
- (b) the Commission in exercising its powers under this section, or
- (c) a person assisting the Commission pursuant to subsection (18).

(24) A person shall not—

- (a) describe himself or herself as a registered gas installer, or
- (b) describe himself or herself in a manner likely to suggest that he or she is a registered gas installer,

unless that person is a member of the designated body.

(25) A person who contravenes subsection (4), (23) or (24) is guilty of an offence and liable—

- (a) on summary conviction to a fine not exceeding €5,000 or a term of imprisonment not exceeding 6 months or to both, or
- (b) on conviction on indictment to a fine not exceeding €15,000 or a term of imprisonment not exceeding 3 years or to both.

(26) In this section—

‘completion certificate’ means a certificate the form of which has been specified by the Commission under subsection (17);

‘designated body’ means a person appointed under subsection (1) to be the designated body for the purposes of this section;

'gas works' means works designated to be such under section 9G.

Gas works.

9G.— (1) The Commission, having consulted with such persons as it considers appropriate, and with the consent of the Minister, may by regulations designate a class or classes of works to be gas works.

(2) In this section 'works' means work which is related to the installation, removal, repair or replacement of a natural gas fitting as defined by section 2 (as inserted by section 11 of the *Energy (Miscellaneous Provisions) Act 2006*).

(3) A person shall not carry out works which are gas works unless that person is—

- (a) a registered gas installer,
- (b) a gas transmission system operator carrying out its functions in accordance with the terms and conditions of the relevant licence,
- (c) a gas distribution system operator carrying out its functions in accordance with the terms and conditions of the relevant licence,
- (d) a gas emergency officer appointed under section 9I performing his or her duties, or
- (e) a gas safety officer appointed under section 9J performing his or her functions under that section.

(4) A person who contravenes subsection (3) is guilty of an offence and liable—

- (a) on summary conviction to a fine not exceeding €5,000 or a term of imprisonment not exceeding 6 months or to both, or
- (b) on conviction on indictment to a fine not exceeding €15,000 or a term of imprisonment not exceeding 3 years or both.

Regulations relating to gas safety.

9H.— (1) The Commission may, in the performance of its functions under paragraphs (ea) and (eb) of section 9(1) make regulations relating to gas safety.

(2) Without prejudice to the generality of subsection (1) regulations made under this section may provide for—

- (a) specifications or requirements regarding the installation or maintenance of natural gas fittings, and
- (b) the conditions to be fulfilled before natural gas may be connected or re-connected to any premises or part of any premises following the installation, maintenance, modification or repair of a natural gas fitting.

(3) Where the Commission propose to make regulations under this section, the Commission shall, before doing so, consult with the Minister, the Minister for the Environment, Heritage and Local Government and such other Minister of the Government (if any) as, in the opinion of the Commission, appears appropriate.

(4) A person who fails to comply with regulations made under this section is guilty of an offence under this section.

(5) A person guilty of an offence under this section is liable—

- (a) on summary conviction to a fine not exceeding €5,000 or a term of imprisonment not exceeding 6 months or to both, or
- (b) on conviction on indictment to a fine not exceeding €15,000 or a term of imprisonment not exceeding 3 years or to both.

(6) (a) Notwithstanding anything specified in regulations made under subsection (2), nothing in this section shall be construed as placing an onus of responsibility on a gas installer to ensure that a natural gas fitting which he or she has correctly installed in a dwelling, place of business or any common area is safely maintained after the point of delivery of natural gas, unless a contractual obligation exists obliging the installer concerned to do so.

(b) Unless specified in any other enactment, the person responsible for ensuring that a natural gas fitting is safely maintained after the point of delivery of natural gas shall be—

(i) in the case of a dwelling:

(I) where that dwelling is the subject of a tenancy, but is not the subject of a lease between a landlord and tenant, the person entitled to receive the rent;

(II) where that dwelling is the subject of a lease between a landlord and tenant, the landlord (subject to the responsibilities of landlords and tenants as set out in sections 12 and 16 of the Residential Tenancies Act 2004); or

(III) where that dwelling is not the subject of a lease or tenancy between a landlord and tenant, the person who would be entitled to receive the rent if the dwelling were the subject of a tenancy or lease,

(ii) in the case of a premises used as a place of business:

(I) where that premises is the subject of a lease between a landlord and tenant, and a covenant (whether express or implied and whether general or specific) exists that the tenant, as lessee, shall keep the premises in repair, the tenant in occupation; or

(II) where that premises is not a premises to which clause (I) applies, such person as the Commission may specify from time to time in the framework published under section 9(1F), following consultation with the Minister, the Minister for the Environment, Heritage and Local Government and such other Minister of the Government (if any) as, in the opinion of the Minister, appears appropriate,

and

(iii) in the case of a common area of land which includes any dwellings the subject of subparagraph (i), or any places of business the subject of subparagraph (ii), or both, and which area is being managed by a management company, that management company.

(c) For the purposes of this subsection—

(i) the term 'business' is to be interpreted in accordance with the meaning given it by section 3 of the Landlord and Tenant (Amendment) Act 1980,

(ii) the term 'dwelling' is to be interpreted in accordance with the meaning given it by section 4 of the Residential Tenancies Act 2004,

(iii) the terms 'lease', 'landlord', 'tenant', and 'tenancy' as they are used in paragraph (b)(i), are to be interpreted in accordance

with the meaning given to them by section 5 of the Residential Tenancies Act 2004, and

- (iv) the terms 'lease', 'lessee', 'landlord' and 'tenant' as they are used in paragraph (b)(ii) are to be interpreted in accordance with the meaning given to them by section 3 of the Landlord and Tenant (Amendment) Act 1980.

Gas emergency officers.

91.— (1) A transmission system operator or a distribution system operator in relation to natural gas may appoint a person to be a gas emergency officer for the purposes of this section.

(2) A gas emergency officer may, subject to the provisions of this section, enter and inspect any land (with force if he or she considers it necessary in the circumstances) without giving notice or obtaining the consent of any person, and there take such measures as the officer considers appropriate for the protection of any person or any property from any danger arising from natural gas.

(3) A person appointed under subsection (1) shall be furnished with a certificate of his or her appointment by the system operator making the appointment, and when exercising a power conferred by this section shall, if requested by any person thereby affected, produce such certificate to such person.

(4) A gas emergency officer may not exercise the powers conferred by this section unless he or she is of the opinion that there is or may be a danger to any person or property arising from—

- (a) the use, misuse or leakage of natural gas, or
- (b) a defect or possible defect in any pipeline or natural gas fitting.

(5) Without prejudice to the generality of subsection (2), in exercising his or her powers under this section a gas emergency officer may—

- (a) instruct any person to evacuate any place until such time as the premises are, in the opinion of the officer, safe,
- (b) instruct any person to perform or refrain from performing any act, if in the opinion of the officer, the performance or non-performance of such act is necessary in order to reduce or prevent any danger arising from natural gas,
- (c) search for any escaped natural gas, or any leak or defect in any pipeline or natural gas fitting,
- (d) interrupt or disconnect the supply of natural gas without notice.

(6) Where a gas emergency officer enters on land in pursuance of powers conferred by this section, the transmission system operator or the distribution system operator on whose behalf the entry was made shall ensure as soon as possible after the powers have been exercised under this section—

- (a) that the land is left no less secure by reason of the entry,
- (b) any damage caused by the gas emergency officer is made good or that compensation is paid to the occupier or owner of the land concerned.

(7) A person who—

- (a) obstructs or impedes a gas emergency officer in the exercise of powers conferred by this section,
- (b) fails or refuses to comply with an instruction given by a gas emergency officer under this section,

- (c) knowingly gives to a gas emergency officer information which is false or misleading in a material respect, or
- (d) turns on or reconnects the supply of natural gas which supply has been turned off or disconnected by a gas emergency officer, without the consent of a gas emergency officer,

is guilty of an offence.

(8) A person guilty of an offence under subsection (7) is liable—

- (a) on summary conviction to a fine not exceeding €5,000 or a term of imprisonment not exceeding 6 months or to both, or
- (b) on conviction on indictment to a fine not exceeding €15,000 or a term of imprisonment not exceeding 3 years or to both.

Gas safety officers.

9J.— (1) The Commission may appoint a person to be a gas safety officer for the purposes of—

- (a) this section,
- (b) paragraphs (ea) and (eb) of section 9(1), and
- (c) subsection (1G) of section 9.

(2) A gas safety officer may, subject to the provisions of this section—

- (a) enter and inspect any land (with force if he or she considers it necessary in the circumstances) without giving notice or obtaining the consent of any person, and there inspect any—
 - (i) natural gas pipeline,
 - (ii) natural gas installation or facility (including a storage facility),
 - (iii) natural gas fitting, or
 - (iv) ventilation fittings (whether mechanical or otherwise) associated with or required for the safe operation of a natural gas fitting,

and take such measures as the officer considers appropriate for the protection of any person or any property from any danger arising from natural gas,

- (b) enter on any land at any reasonable time and there—
 - (i) make such inspections and carry out such tests as he or she thinks fit in relation to any activities in or on a premises or installation,
 - (ii) take any measurement or photograph or make any electrical or electronic recording which he or she considers necessary for the purposes of any such examination or inquiry,
 - (iii) require any relevant person in authority to produce to him or her such documents, records or materials as are in that person's possession or control relating to the matter under inquiry and to give to him or her such information as he or she may reasonably require in regard to such documents, record or materials,
 - (iv) inspect and copy or extract information from documents, records or materials produced to him or her under subpara-

graph (iii) or which he or she finds during the course of entry to premises,

(v) take samples of natural gas.

(3) A person appointed under subsection (1) shall be furnished with a certificate of his or her appointment by the Commission, and when exercising a power conferred by this section shall, if requested by any person thereby affected, produce such certificate to such person.

(4) Without prejudice to the generality of subsection (2), in exercising his or her powers under this section, a gas safety officer may—

- (a) instruct any person to evacuate any premises until such time as the premises are, in the opinion of the officer, safe,
- (b) instruct any person to perform or refrain from performing any act, if in the opinion of the officer, the performance or non-performance of such act is necessary in order to reduce or prevent any danger arising from natural gas,
- (c) search for any escaped natural gas, or any leak or defect in any pipeline or natural gas fitting,
- (d) interrupt or disconnect the supply of natural gas without notice.

(5) Where a gas safety officer enters on land in pursuance of powers conferred by this section, the Commission shall ensure as soon as possible after the powers have been exercised under this section—

- (a) that the land is left no less secure by reason of the entry,
- (b) any damage caused by the gas safety officer is made good or that compensation is paid to the occupier or owner of the land concerned.

(6) A person who—

- (a) obstructs or impedes a gas safety officer in the exercise of powers conferred by this section,
- (b) fails or refuses to comply with an instruction given by a gas safety officer under this section,
- (c) knowingly gives to a gas safety officer information which is false or misleading in a material respect, or
- (d) turns on or reconnects the supply of natural gas which supply has been turned off or disconnected by a gas safety officer, without the consent of a gas safety officer,

is guilty of an offence.

(7) A person guilty of an offence under this section is liable—

- (a) on summary conviction to a fine not exceeding €5,000 or a term of imprisonment not exceeding 6 months or to both, or
- (b) on conviction on indictment to a fine not exceeding €15,000 or a term of imprisonment not exceeding 3 years or to both.”.

Extension of gas safety provisions to liquefied petroleum gas.

14.—The Act of 1999 is amended by the insertion after section 9J (inserted by *section 13*) of the following section:

"Extension of gas safety provisions to liquefied petroleum gas.

9K.— A reference in—

- (a) sections 9F to 9J of this Act,
- (b) paragraphs (ea) to (ec) of section 9(1), and
- (c) subsections (1G) and (1H) of section 9,

to natural gas shall be construed and have effect as if it included a reference to liquefied petroleum gas."

Annotations

Amendments:

- F2** Repealed by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 28, not commenced as of date of revision.

Modifications (not altering text):

- C4** Prospective amending provision: section repealed by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 28, not commenced as of date of revision.

14.—F2[...]

PART 4

AMENDMENT OF GAS ACT 1976

Amendment of section 2 of Act of 1976.

15.— Section 2 of the Gas Act 1976 is amended by substituting the following definitions for "foreshore", "harbour authority" and "local authority", respectively:

"foreshore" means the bed and shore, below the line of high water of ordinary or medium tides, of the sea and of every tidal river and tidal estuary and of every channel, creek and bay of the sea or of any such river or estuary and the outer limit of the foreshore shall be determined in accordance with section 1A (inserted by section 60 of the Maritime Safety Act 2005) of the Foreshore Act 1933;

"harbour authority" means—

- (a) in the case of a harbour to which the Harbours Act 1996 applies, the harbour company concerned,
- (b) in the case of a harbour to which the Harbours Acts 1946 to 1976 apply, the harbour authority concerned,
- (c) in the case of a fishery harbour centre to which the Fishery Harbour Centres Act 1968 applies or any other harbour under the control or management of the Minister for Communications, Marine and Natural Resources, that Minister,
- (d) in the case of a harbour under the control or management of a local authority, the local authority concerned,

(e) in the case of a harbour under the control or management of Iarnród Éireann – Irish Rail, that company,

(f) in the case of any other harbour, the owner;

“local authority” has the meaning assigned to it by the Local Government Act 2001;

Power of Bord Gáis Éireann to create capital stock.

16.— The Act of 1976 is amended by the insertion after section 7 of the following sections:

“Definitions.

7A.— In this section and in sections 7B to 7G—

‘approved scheme’ means a scheme or schemes relating to the Board which is or are approved by the Revenue Commissioners, from time to time, pursuant to Part 17 of the Taxes Consolidation Act 1997;

‘capital stock’ has the meaning assigned to it by section 7B;

‘company’ means a company within the meaning of the Companies Act 1963;

‘employees of the Board’ means the officers and servants of the Board;

‘net assets of the Board’ means all the reserves contained in the balance sheet of the Board.

Power to create and issue capital stock.

7B.— (1) By virtue of this section, the Board has, as part of its functions, the power to create stock (‘capital stock’) subject to such terms and conditions contained in any capital stock scheme made pursuant to section 7E, in amounts that, in aggregate, are equal to the net assets of the Board.

(2) (a) The Board may, in accordance with an approved scheme, make available to employees of the Board or trustees on their behalf up to 5 per cent of the capital stock in return for transformations in the company of at least equal value carried out by the employees of the Board.

(b) The Board shall issue 10 per cent of any capital stock to the Minister for Communications, Marine and Natural Resources without payment and the said capital stock shall be treated as fully paid up.

(c) The Board shall issue the remainder of any capital stock to the Minister for Finance without payment and the said capital stock shall be treated as fully paid up.

Exercise of powers by Minister for Finance and Minister for Communications, Marine and Natural Resources in respect of capital stock.

7C.— (1) Subject to the provisions of this Act, the Minister for Finance may, in respect of the capital stock held by him or her, exercise all the rights or powers of a holder of such capital stock and, where such right or power is exercisable by attorney, exercise it by his or her attorney.

(2) Subject to the provisions of this Act, the Minister for Communications, Marine and Natural Resources may, in respect of the capital stock held by him or her, exercise all the rights or powers of a holder of such capital stock and, where such right or power is exercisable by attorney, exercise it by his or her attorney.

(3) The Minister for Communications, Marine and Natural Resources shall not sell, exchange, surrender or otherwise dispose of all or any of the capital stock in the Board held by him or her without the prior consent of the Minister for Finance.

Conversion of capital stock into company shares.

7D.— If further legislation is enacted after the passing of this Act to reconstitute the Board as a company, then the capital stock shall be converted into ordinary share capital in the company in a manner so that the new share holdings in the company equate with the capital stock holdings in the Board immediately before the reconstitution of the Board as a company.

Arrangements relating to rights and obligations relating to capital stock.

7E.— (1) The Board may make a scheme (in this section referred to as a ‘capital stock scheme’) as respects—

(a) the terms and conditions relating to the creation of capital stock, and

(b) the rights and obligations attaching to the capital stock,

and any such capital stock scheme shall be subject to the prior written consent of the Minister for Communications, Marine and Natural Resources and the Minister for Finance.

(2) Without prejudice to the generality of subsection (1), a capital stock scheme made under subsection (1) may include provisions relating to dividends, voting rights, Board representation and the limitation of the transfer or alienation of beneficial ownership in capital stock.

(3) Every capital stock scheme made pursuant to this section shall be laid before each House of the Oireachtas as soon as may be after it has been made and, if a resolution annulling the capital stock scheme is passed by either such house within the next 21 days on which that House has sat after the scheme is laid before it, the capital stock scheme shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

Power of Board to establish approved scheme.

7F.— The Board shall have the power to establish an approved scheme.

7G.— All amounts representing dividends or other money received by the Minister for Finance or the Minister for Communications, Marine and Natural Resources in respect of capital stock held by either of them shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct.”.

Payment of dividend into Exchequer.

Amendment of section 10A of Act of 1976.

17.— (1) Section 10A of the Gas Act 1976 is amended by the substitution for subsection (2) of the following subsection:

“(2) (a) Subject to subsection (7) and subject to such exemptions as may be granted in accordance with Article 22 of the Directive, where an application is received for third party access from or on behalf of an eligible customer in respect of a downstream facility operated by a person licensed under section 16 of the Gas (Interim) (Regulation) Act 2002, the facility operator shall offer to enter into an agreement for such access, subject to terms and conditions specified in directions issued by the Commission under subsection (5).

(b) In paragraph (a), ‘eligible customer’ means—

(i) the holder of a natural gas licence under section 16 of the Gas (Interim) (Regulation) Act 2002, for the purpose of carrying out any activity for which the holder is licensed,

(ii) the holder of a petroleum lease under section 13 of the Petroleum and Other Minerals Development Act 1960, for the purpose of carrying out any activity connected with the lease,

- (iii) a person in respect of whom an order has been made under section 2(1) of the Gas (Amendment) Act 1987, for the purpose of carrying out the functions conferred on the person by the order,
 - (iv) a person who operates a gas-fired generating station, irrespective of its annual consumption level, for the purpose of providing energy for the generation of electricity at that station,
 - (v) a customer purchasing natural gas which is not exclusively for his or her household use, and
 - (vi) subject to the provisions of *section 17(2) of the Energy (Miscellaneous Provisions) Act 2006*, with effect from the coming into operation of this paragraph, any person.”
- (2) (a) Subject to the provisions of this subsection, subparagraph (vi) of section 10A(2)(b) of the Gas Act 1976 (inserted by *subsection (1)*) shall come into operation on—
- (i) such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different provisions or different purposes and in particular the Minister may in any such order under this section specify or delimit a geographical area as respects which the order is to apply, or
 - (ii) to the extent that subparagraph (vi) has not previously been commenced, the 1st day of July 2007,
- whichever is the earlier.
- (b) Before making an order under *paragraph (a)(i)* the Minister shall consult the Commission which shall indicate to the Minister whether, in its opinion, the making of such an order would be in the best interests of the natural gas market and natural gas consumers in the State generally or any part of the State.

Amendment of section 10B of Act of 1976.

18.— (1) Section 10B of the Gas Act 1976 is amended by the substitution for subsection (1) of the following subsection:

“(1) (a) Subject to subsection (6) and subject to such exemptions as may be granted in accordance with Article 22 of the Directive, where an application is received for third party access in respect of an upstream pipeline from or on behalf of an eligible customer, the upstream pipeline operator shall offer to enter into an agreement for such access, subject to terms and conditions specified in regulations made by the Minister under subsection (3).

(b) In paragraph (a), ‘eligible customer’ means—

- (i) the holder of a natural gas licence under section 16 of the Gas (Interim) (Regulation) Act 2002, for the purpose of carrying out any activity for which the holder is licensed,
- (ii) the holder of a petroleum lease under section 13 of the Petroleum and Other Minerals Development Act 1960, for the purpose of carrying out any activity connected with the lease,
- (iii) a person in respect of whom an order has been made under section 2(1) of the Gas (Amendment) Act 1987, for the purpose

of carrying out the functions conferred on the person by the order,

- (iv) a person who operates a gas-fired generating station, irrespective of its annual consumption level, for the purpose of providing energy for the generation of electricity at that station,
- (v) a customer purchasing natural gas which is not exclusively for his or her household use, and
- (vi) subject to the provisions of *section 18(2)* of the *Energy (Miscellaneous Provisions) Act 2006*, with effect from the coming into operation of this subparagraph, any person.”.

(2) Subject to the provisions of this subsection, subparagraph (vi) of section 10B(1)(b) of the Gas Act 1976 (inserted by *subsection (1)*) shall come into operation on—

- (a) such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different provisions or different purposes, or
- (b) to the extent that subparagraph (vi) has not previously been commenced, the 1st day of July 2007,

whichever is the earlier.

PART 5

AMENDMENT OF GAS (INTERIM) (REGULATION) ACT 2002

Amendment of Gas (Interim) (Regulation) Act 2002.

19.— The Gas (Interim) (Regulation) Act 2002 is amended by the insertion after section 21 of the following sections:

“Supplier of last resort.

21A.— (1) (a) The Commission may invite expressions of interest from persons who are licensed suppliers to act as a supplier of last resort, that is, to supply gas in accordance with this section.

- (b) Following public consultation and subject to paragraph (c), the Commission shall designate a licensed supplier to act as a supplier of last resort.
- (c) The Commission may reconfirm, amend or revoke a designation made under this subsection as it sees fit.

(2) A supplier of last resort shall supply gas to final customers of another licensed supplier where—

- (a) a licensed supplier with whom final customers have a supply contract ceases or fails to supply gas to those final customers in accordance with its contractual obligations, or
- (b) following representations to the Commission from a licensed supplier, the Commission is of the opinion that circumstances exist which warrant a direction to that supplier of last resort to supply gas to a final customer.

(3) The Commission shall include in a designation under subsection (1) any terms, conditions or requirements considered necessary by the Commission in respect of the functions of that supplier of last resort.

(4) The Commission shall specify in a designation—

- (a) the terms and conditions under which that supplier of last resort shall supply gas to a final customer, including those in relation to—
 - (i) duration of supply,
 - (ii) termination of supply, and
 - (iii) price,
- (b) the method for calculating the charges for the supply of gas to a final customer,
- (c) any other matters which the Commission considers necessary for the purpose of the supply of gas to a final customer by that supplier of last resort,

and that supplier of last resort shall comply with the matters so specified.

(5) Where a final customer is supplied with gas by a supplier of last resort, a contract for the supply of gas shall be deemed to exist between the final customer and the supplier of last resort concerned from the date upon which the supply of gas to the final customer by such supplier of last resort commences and such contract shall be subject to terms and conditions specified by the Commission in designating that supplier of last resort.

Shipper of last resort.

21B.— (1) (a) The Commission may invite expressions of interest from licensed shippers to act as a shipper of last resort, that is, to ship gas in accordance with this section.

- (b) Following public consultation and subject to paragraph (c), the Commission may designate a licensed shipper to act as a shipper of last resort.
- (c) Notwithstanding the generality of paragraphs (a) and (b), where the Commission is of the opinion that Bord Gáis Éireann is an appropriate person to carry out the functions of a shipper of last resort under this section, it may, in accordance with paragraph (b), designate Bord Gáis Éireann to act as a shipper of last resort.
- (d) The Commission may reconfirm, amend or revoke a designation made under paragraph (b) as it sees fit.

(2) A shipper of last resort shall ship gas to customers of another licensed shipper where—

- (a) a licensed shipper with whom customers have a shipping contract ceases or fails to ship gas to those customers in accordance with its contractual obligations, or
- (b) following representations to the Commission from a licensed shipper, the Commission is of the opinion that circumstances exist which warrant a direction to that shipper of last resort to ship gas to a customer of a licensed shipper.

(3) The Commission shall include in a designation under subsection (1) any terms, conditions or requirements considered necessary by the Commission in respect of the functions of that shipper of last resort.

(4) The Commission shall specify in a designation—

- (a) the terms and conditions under which that shipper of last resort shall ship gas to a customer of a licensed shipper, including those in relation to—
 - (i) the duration of the obligation,
 - (ii) the termination of obligation, and
 - (iii) charges,
- (b) the method for calculating the charges for the shipping of gas arising from the designation,
- (c) any other matters which the Commission considers necessary,

and that shipper of last resort shall comply with the matters so specified.

(5) Where a shipper of last resort ships gas to or on behalf of a customer of a licensed shipper in accordance with this section, a contract for the shipping of that gas shall be deemed to exist between that customer and the shipper of last resort concerned from the date upon which the shipping of gas to the customer by such shipper of last resort commences, and such contract shall be subject to terms and conditions specified by the Commission in designating the shipper of last resort.

(6) The Commission may designate a person who is both a licensed shipper and a licensed supplier to be a shipper of last resort under this section and a supplier of last resort under section 21A.”.

PART 6

AMENDMENT OF TURF DEVELOPMENT ACT 1998

Increase in borrowing power of Bord na Móna.

20.— Section 22 of the Turf Development Act 1998 is amended in subsection (1)(b) by the substitution of “€400 million” for “£100 million”.

PART 7

AMENDMENT OF ACT OF 2001

Amendment of Act of 2001.

21.— (1) The Act of 2001 is amended in section 2 by the insertion after subsection (2) of the following subsections:

“(3) Of the capital stock in the Board issued to the Minister for Finance pursuant to subsection (2)(a) there shall, on the coming into operation of this subsection, stand transferred to the Minister for Communications, Marine and Natural Resources and rest in that Minister capital stock in the Board amounting to 10 per cent of the capital stock in the Board.

(4) As respects capital stock issued by the Board after the coming into operation of this subsection—

- (a) 85 per cent of such capital stock shall issue to the Minister for Finance without payment and the said capital stock shall be treated as fully paid-up, and

(b) 10 per cent of such capital stock shall issue to the Minister for Communications, Marine and Natural Resources without payment and the said capital stock shall be treated as fully paid-up,

and such arrangements shall apply in place of the arrangements specified in subsection (2)(a)."

(2) The Act of 2001 is amended by the substitution of the following section for section 3:

"Exercise of powers by Minister for Finance and Minister for Communications, Marine and Natural Resources in respect of capital stock.

3.— (1) Subject to the provisions of this Act, the Minister for Finance may, in respect of the capital stock held by him or her, exercise all the rights or powers of a holder of such capital stock and, where such right or power is exercisable by attorney, exercise it by his or her attorney.

(2) Subject to the provisions of this Act, the Minister for Communications, Marine and Natural Resources may, in respect of the capital stock held by him or her, exercise all the rights or powers of a holder of such capital stock and, where such right or power is exercisable by attorney, exercise it by his or her attorney.

(3) The Minister for Communications, Marine and Natural Resources shall not sell, exchange, surrender or otherwise dispose of all or any of the capital stock in the Board held by him or her without the prior consent of the Minister for Finance."

(3) The Act of 2001 is amended by the substitution for section 7 of the following section:

"Payment of dividends into Exchequer.

7.— All amounts representing dividends or other money received by the Minister for Finance or the Minister for Communications, Marine and Natural Resources in respect of capital stock held by either of them shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct."

(4) The Act of 2001 is amended by the substitution for section 11 of the following section:

"Expenses.

11.— The expenses incurred by the Minister for Communications, Marine and Natural Resources and the Minister for Finance in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of monies provided by the Oireachtas."

PART 8

EFFECT OF CERTAIN AMENDMENTS MADE TO PLANNING AND DEVELOPMENT ACT 2000

Certain development approvals under Part XI of Planning and Development Act 2000.

22.— (1) In this section—

"Act of 2000" means the Planning and Development Act 2000;

"Act of 2006" means the Planning and Development (Strategic Infrastructure) Act 2006.

(2) In *subsections (3) to (5)* a reference to a numbered section without qualification is a reference to the section so numbered that has been inserted in the Act of 2000 by the Act of 2006.

(3) No approval shall be required under—

- (a) section 181B,
- (b) section 182B, or
- (c) section 182D,

in relation to development referred to in section 181A, 182A or 182C, respectively, if—

- (i) in the case of development referred to in section 181A, a notification in respect of the development has been published, before the commencement of this section, in accordance with regulations under section 181(1)(b) of the Act of 2000 (whether or not the development has been commenced or completed before the commencement of this section),
- (ii) in the case of development referred to in section 182A, the development has been the subject of—
 - (I) a grant of permission under section 34 of the Act of 2000 before the commencement of this section and that permission is in force immediately before such commencement, or
 - (II) an application made, before the commencement of this section, in accordance with the Act of 2000 and regulations thereunder for the grant of such a permission and that application does not stand withdrawn before the commencement of this section,
- (iii) in the case of development referred to in section 182C, the development has been the subject of—
 - (I) a grant of consent under section 39A or 40 of the Act of 1976 before the commencement of this section and that consent is in force immediately before such commencement, or
 - (II) an application made, before the commencement of this section, in accordance with the Act of 1976 and regulations thereunder for the grant of such a consent and that application does not stand withdrawn before the commencement of this section.

(4) Nothing in section 182C or any other provision of the Act of 2000 shall be read as meaning that, notwithstanding the permission granted under section 34 of the Act of 2000 in respect of that terminal before such commencement, a permission—

- (a) under section 34 or 37G of the Act of 2000, and
- (b) granted after the commencement of the amendments of that Act made by the Act of 2006,

is required, either in circumstances generally or in the circumstances referred to in *subsection (5)*, in respect of the terminal referred to in *subsection (6)*.

(5) The circumstances mentioned in *subsection (4)* are that an application is made under section 182C in relation to a development which, if it is carried out, will consist of the alteration or modification of the terms of the strategic gas infrastructure development referred to in *subsection (6)* other than the terms of that development that comprise the terminal referred to in that subsection.

(6) The terminal mentioned in *subsections (4) and (5)* is a terminal comprised in a strategic gas infrastructure development (within the meaning of the Act of 2000) the

pipeline comprised in which development has been the subject of a consent referred to in *subsection (3)(iii)(l)*.

PART 9

REHABILITATION OF MINES

Annotations

Modifications (not altering text):

- C5** Prospective affecting provision: application of Part continued in certain circumstances by *Minerals Development Act 2017 (23/2017)*, s. 236(2), not commenced as of date of revision.

Rehabilitation of mines

236. (1) In this section “Part 9 mine” means a mine within the meaning of section 23 of the Energy (Miscellaneous Provisions) Act 2006 in respect of which a mine rehabilitation plan was being implemented under Part 9 of that Act before the coming into operation of this section.

(2) Notwithstanding the repeal of Part 9 of the Energy (Miscellaneous Provisions) Act 2006, that Part continues to apply to a Part 9 mine.

(3) Part 5 of this Act does not apply to the rehabilitation of a Part 9 mine.

Interpretation
(Part 9).

23.— In this Part—

F3 [‘local authority’ means a local authority for the purposes of the Local Government Act 2001 (as amended by the Local Government Reform Act 2014);]

“mine” means any mine or quarry within the meaning of subsection (1) or (2), respectively, of section 3 of the Mines and Quarries Act 1965 and includes—

(a) any place to which subsection (3) of that section relates, and

(b) any place used for the deposit of spoil or other refuse taken from the mine or quarry,

and a reference to the site of a former mine shall be read accordingly;

“mine rehabilitation plan” has the meaning given in *section 24(1)*;

“Minister” means Minister for Communications, Marine and Natural Resources;

“rehabilitation”, in relation to a mine, means the treatment of the land affected by a mine in such a way as to restore the land to a satisfactory state, with particular regard to soil quality, wildlife, natural habitats, freshwater systems, landscaping and appropriate beneficial uses.

Annotations

Amendments:

- F3** Substituted (1.06.2014) by *Local Government Reform Act 2014 (1/2014)*, s. 5(8) and sch 2. part 6, S.I. No. 214 of 2014.
- F4** Repealed by *Minerals Development Act 2017 (23/2017)*, s. 238(3)(c), not commenced as of date of revision, subject to transitional provision in s. 236.

Modifications (not altering text):

C6 Prospective affecting provision: section repealed by *Minerals Development Act 2017* (23/2017), s. 238(3)(c), not commenced as of date of revision, subject to transitional provision in s. 236.

23.—F4[...]

Mine rehabilitation plan.

24.— (1) Where the Minister or a local authority is of the opinion that, in respect of the site of a former mine, the rehabilitation of the site—

- (a) is wholly or mainly necessary for the purpose of public or animal health or safety, for the protection of the environment or is otherwise in the public interest, and
- (b) it is not feasible to expect that the site will otherwise be rehabilitated within a reasonable time having regard to *paragraph (a)*,

then the Minister, a local authority as agent of the Minister under *section 26* or a local authority acting on its own behalf with the consent of the Minister—

- (i) may prepare a plan for the long-term rehabilitation of the site (“mine rehabilitation plan”), and
- (ii) may implement the mine rehabilitation plan.

(2) A mine rehabilitation plan, whether or not implemented, may be revised from time to time—

- (a) by a local authority acting as agent of the Minister under *section 26(1)*,
- (b) by the local authority concerned with the consent of the Minister,
- (c) in any other case, by the Minister.

(3) Nothing in this section shall be read as affecting any obligations of—

- (a) the person who operated the mine, or
- (b) the owner or occupier of the site of the former mine in respect of the former mine, or
- (c) any other person who otherwise has obligations in respect of the site of the former mine.

(4) In preparing a mine rehabilitation plan, the Minister or a local authority (as the case may be) shall consult with the each of the following, if reasonably ascertainable:

- (a) the owner or occupier of the site of the former mine;
- (b) the owner or occupier of any land which is affected by the site of the former mine or over which access to the site might be required;
- (c) any other person who may have obligations in respect of the site of the former mine,

and may consult such any other person, including any group or association of persons, as the Minister or the local authority (as the case may be) considers appropriate in the circumstances.

(5) In revising a mine rehabilitation plan, the Minister or a local authority (as the case may be) shall, where appropriate, consult with each of the persons referred to in *subsection (4)*.

(6) Nothing in this Part shall be read as requiring the Minister or a local authority (as the case may be) to implement a plan prepared under this section.

Annotations**Amendments:**

- F5** Repealed by *Minerals Development Act 2017* (23/2017), s. 238(3)(c), not commenced as of date of revision, subject to transitional provision in s. 236.

Modifications (not altering text):

- C7** Prospective affecting provision: section repealed by *Minerals Development Act 2017* (23/2017), s. 238(3)(c), not commenced as of date of revision, subject to transitional provision in s. 236.

24.—F5[...]

Advances by
Minister for mine
rehabilitation
plans, etc.

25.— (1) For the purposes of—

- (a) a mine rehabilitation plan, or
- (b) a mine rehabilitation plan which forms part of a project under section 46 (which relates to advances by the Minister for the purpose of marine or natural resource based tourism or heritage projects) of the Merchant Shipping (Investigation of Marine Casualties) Act 2000,

the Minister may, with the consent of the Minister for Finance, from time to time advance to a person (including a local authority acting on its own behalf or as agent of the Minister) out of monies provided by the Oireachtas such sums, by way of grant or loan (where appropriate), as the Minister may determine and upon such terms and conditions as he or she considers necessary.

(2) Where before the passing of this Act a local authority undertook work as an agent for the Minister in respect of the site of a former mine, which work was undertaken in accordance with a project similar in nature to a mine rehabilitation plan, then such work shall, for the purposes of *subsection (1)*, be deemed to be work under a mine rehabilitation plan.

Annotations**Amendments:**

- F6** Repealed by *Minerals Development Act 2017* (23/2017), s. 238(3)(c), not commenced as of date of revision, subject to transitional provision in s. 236.

Modifications (not altering text):

- C8** Prospective affecting provision: section repealed by *Minerals Development Act 2017* (23/2017), s. 238(3)(c), not commenced as of date of revision, subject to transitional provision in s. 236.

25.—F6[...]

Mine rehabilita-
tion plan and
appointment of
local authority as
agent of Minister.

26.— (1) A local authority may be appointed by the Minister as agent of the Minister to do one or more of the following:

- (a) prepare a mine rehabilitation plan;
- (b) revise a mine rehabilitation plan; or
- (c) carry out a mine rehabilitation plan,

on such terms and conditions as the Minister may decide.

(2) After consultation with the Minister for the Environment, Heritage and Local Government, the Minister may appoint a local authority to discharge functions under this section in respect of so much of the site of a former mine which is within the local authority's functional area.

(3) Nothing in *subsection (2)* shall be read as affecting any appointment, made by the Minister before the passing of this Act, of a local authority as agent of the Minister to carry out a project similar in nature to a mine rehabilitation plan.

Annotations

Amendments:

- F7** Repealed by *Minerals Development Act 2017 (23/2017)*, s. 238(3)(c), not commenced as of date of revision, subject to transitional provision in s. 236.

Modifications (not altering text):

- C9** Prospective affecting provision: section repealed by *Minerals Development Act 2017 (23/2017)*, s. 238(3)(c), not commenced as of date of revision, subject to transitional provision in s. 236.

26.—F7[...]

Power of entry.

27.— (1) For the purpose of deciding whether or not to prepare, revise or implement a mine rehabilitation plan in respect of the site of a former mine or in preparing, revising or implementing such a plan, the Minister, a local authority acting as agent of the Minister or a local authority acting on its own behalf (as the case may be) has—

(a) at all reasonable times a right of entry and a right of way to the site of the former mine, subject to—

(i) except in cases of urgency, advance notice to the owner or occupier (in so far as such owner or occupier can reasonably be ascertained), and

(ii) if requested, the payment of compensation of an amount for any loss or expenditure incurred by the owner or occupier of any land affected by the exercise of the right of entry and the right of way by the Minister or the local authority concerned, but only to the extent that it is just and equitable in the circumstances after having had regard to—

(I) any improvement in the land to the benefit of the owner or occupier as a consequence of the mine rehabilitation plan,

(II) any obligation that the owner or occupier of the land concerned has in respect of the site of the former mine,

and

(b) all such powers as may be necessary or expedient for or incidental to its functions in relation to a mine rehabilitation plan.

(2) Where—

(a) before the passing of this Act a project, similar in nature to a mine rehabilitation plan, was commenced in respect of the site of a former mine by a local authority, whether acting as agent for the Minister or otherwise, and

(b) the project continues to be implemented or, having been implemented, the site or any part of it requires monitoring for the purposes set out in *section 24(1)(a)*,

then *paragraphs (a) and (b) of subsection (1)* shall apply in respect of the site.

- (3) (a) The functions of the Minister or a local authority under this section may be exercised by one or more persons on behalf of the Minister or the local authority.
- (b) The owner or occupier of land to which *subsection (1)* relates may request evidence of identity in respect of a person exercising functions pursuant to *paragraph (a)*.
- (c) For the purposes of *paragraph (b)*, evidence of identity may be proved in one of the following ways:
- (i) if the person is an officer or employee of the Minister or the local authority, an identity card or such other document issued by or on behalf of the Minister or the local authority which identifies that person as an officer or employee (however expressed) of the Minister or the local authority, as the case may be;
- (ii) in any other case—
- (I) where a notice to which *subsection (1)(a)(i)* relates is given in writing and identifies the person given the power of entry, sufficient evidence to identify that person or that the person to whom the evidence relates is an officer or employee (however expressed), or is acting as an agent, of the person given the power of entry, or
- (II) evidence in writing from or on behalf of the Minister or from the local authority that the person has been given the power of entry, together with sufficient evidence to identify that person or that the person to whom the evidence relates is an officer or employee (however expressed), or is acting as an agent, of the person given the power of entry.

Annotations**Amendments:**

- F8** Repealed by *Minerals Development Act 2017* (23/2017), s. 238(3)(c), not commenced as of date of revision, subject to transitional provision in s. 236.

Modifications (not altering text):

- C10** Prospective affecting provision: section repealed by *Minerals Development Act 2017* (23/2017), s. 238(3)(c), not commenced as of date of revision, subject to transitional provision in s. 236.

27.—F8[...]

Power of Minister to acquire lands, etc.

28.— (1) In connection with the implementation of any mine rehabilitation plan, the Minister may, with the consent of the Minister for Finance, do either or both of the following:

- (a) purchase by agreement such lands, or rights in, under or over such lands or any substratum of such lands, as the Minister considers necessary or expedient for the purposes of that plan;
- (b) by order acquire compulsorily lands, or rights in, under or over lands or any substratum of lands, that are specified in an order made under *subsection (2)*.
- (2) (a) If for the purposes of any mine rehabilitation plan the Minister thinks it necessary or expedient to acquire compulsorily any land, or rights in, under or over land or any substratum of land, then the Minister may, with the consent of the Minister for Finance, by order declare his or her intention to

- so acquire such land or rights. Every such order shall operate to confer on the Minister power to acquire compulsorily in accordance with this section the land or rights concerned.
- (b) Before making an order under this subsection, the Minister shall—
- (i) deposit and keep open for inspection at some suitable place (public notice of which shall be given) such plans, specifications and other documents as will show fully and clearly the land or rights intended to be acquired by virtue of the order,
 - (ii) give notice, in such manner as he or she may consider best adapted for informing persons likely to be affected by the order, of his or her intention to consider the making of the order and of the manner in which representations and objections in respect of the order may be made, and
 - (iii) if he or she considers it expedient so to do, cause a public inquiry to be held in regard to the making of the order.
- (3) (a) Where, immediately before an order is made by the Minister under this section, any person has any estate, right, easement, title or other interest in, over or in respect of the land acquired by the order, the person may apply to the Minister at any time after the making of the order for compensation in respect of that interest and the Minister shall, subject to *subsection (4)*, thereupon pay to the person by way of compensation an amount equal to the value (if any), on the date of the order, of that interest together with interest at such rate as the Minister, with the consent of the Minister for Finance, may determine from time to time, on the amount from that date to the date of payment thereof.
- (b) The compensation to be paid under this paragraph in respect of any estate, right, easement, title or interest of any kind in, over or in respect of land shall, in default of agreement, be determined by arbitration under and in accordance with the Acquisition of Land (Assessment of Compensation) Act 1919.
- (4) (a) The Minister may by regulations, in such cases (if any) and to such extent as he or she considers necessary for the purposes of compulsory acquisition under this section, apply all or any of the provisions of sections 69 to 83 of the Lands Clauses Consolidation Act 1845 as if—
- (i) such compensation were purchase money or compensation under that Act, and
 - (ii) the Minister was the promoter of the undertaking,
- together with any other necessary modifications.
- (b) Where money is paid into court under section 69 of the Lands Clauses Consolidation Act 1845, as applied by the Minister under this subsection, no costs shall be payable by the Minister to any person in respect of any proceedings for the investment, payment of income or payment of capital of such money.
- (5) The following applies to any public inquiry held under this section:
- (a) the Minister shall appoint a fit and proper person to hold the inquiry;
 - (b) such person is hereby authorised to administer oaths to persons appearing as witnesses at the inquiry; and
 - (c) any person with an interest in or affected by the subject matter of the inquiry shall be entitled to appear personally or by counsel or solicitor and to adduce evidence.

(6) Nothing in this section shall be read as restricting the powers of a local authority to compulsorily acquire the site of a former mine, or any part of such site, under the Derelict Sites Act 1990 or under any other enactment.

Annotations

Amendments:

- F9** Repealed by *Minerals Development Act 2017* (23/2017), s. 238(3)(c), not commenced as of date of revision, subject to transitional provision in s. 236.

Modifications (not altering text):

- C11** Prospective affecting provision: section repealed by *Minerals Development Act 2017* (23/2017), s. 238(3)(c), not commenced as of date of revision, subject to transitional provision in s. 236.

28.—F9[...]

Editorial Notes:

- E6** Power pursuant to subs. (4) exercised (9.05.2013) by *Energy (Miscellaneous Provisions) Act 2006* (section 28(4)) *Regulations 2013* (S.I. No. 155 of 2013).

Recovery of expenditure on mine rehabilitation plan.

29.— Any expenditure incurred under this Part by the Minister or a local authority in the rehabilitation of the site of a former mine may, where considered appropriate in the circumstances, be recovered by the Minister or the local authority (as the case may be) against any person with a contractual or other enforceable obligation to rehabilitate that site to the extent of that person's obligation to rehabilitate the mine.

Annotations

Amendments:

- F10** Repealed by *Minerals Development Act 2017* (23/2017), s. 238(3)(c), not commenced as of date of revision, subject to transitional provision in s. 236.

Modifications (not altering text):

- C12** Prospective affecting provision: section repealed by *Minerals Development Act 2017* (23/2017), s. 238(3)(c), not commenced as of date of revision, subject to transitional provision in s. 236.

29.—F10[...]

Scope of Part 9.

30.— (1) This Part is in addition to, and not in substitution or restrictive of, any other requirement or obligation imposed by law.

(2) Nothing in *subsection (1)* or in any other act or in any instrument made under an act shall be read so as to restrict the exercise of functions under this Part.

Annotations

Amendments:

- F11** Repealed by *Minerals Development Act 2017* (23/2017), s. 238(3)(c), not commenced as of date of revision, subject to transitional provision in s. 236.

Modifications (not altering text):

C13 Prospective affecting provision: section repealed by *Minerals Development Act 2017* (23/2017), s. 238(3)(c), not commenced as of date of revision, subject to transitional provision in s. 236.

30.—F11[...]

Section 6.

SCHEDULE

“SCHEDULE 3

COMBINED HEAT AND POWER

1. Subject to paragraph 2, electricity production from combined heat and power shall be calculated as follows:

- (a) in the case of combined cycle gas turbine with heat recovery or in the case of steam condensing extraction turbine with an annual overall efficiency of 80 per cent or greater, the total annual electricity production of the unit measured at the outlet of the main generators shall be considered to be electricity produced from combined heat and power;
- (b) in the case of any other technology or technologies which satisfy the definition of combined heat and power and which have an annual overall efficiency of 75 per cent or greater, the total annual electricity production of the unit measured at the outlet of the main generators shall be considered to be electricity produced from combined heat and power; and
- (c) in the case of combined heat and power units with an annual overall efficiency below the values referred to in subparagraphs (a) and (b), the electricity produced from combined heat and power is calculated as follows:

$$E_{\text{CHP}} = H_{\text{CHP}} \cdot C$$

where:

- E_{CHP} is electricity production from combined heat and power.
- C is the actual power to heat ratio of the unit.
- H_{CHP} is the amount of useful heat from combined heat and power (calculated as total heat production minus any heat produced in separate boilers or by live steam extraction from the steam generator before the turbine).

2. If a share of the energy content of the fuel input to the combined heat and power process is recovered in chemicals and recycled this share can be subtracted from the fuel input before calculating the overall efficiency used in paragraph 1.

3. The relative amount of primary energy savings provided by combined heat and power production shall be calculated as follows:

$$PES = \left[1 - \frac{1}{\frac{CHP \eta_H}{Ref \eta_H} + \frac{CHP \eta_E}{Ref \eta_E}} \right] \times 100\%$$

Where:

- PES is primary energy savings.
- CHP η_H is the heat efficiency of the combined heat and power, defined as annual useful heat output divided by the fuel input used to produce the sum of useful heat output and electricity production from combined heat and power.
- Ref η_H is the efficiency reference value for separate heat production determined in accordance with section 7(6).
- CHP η_E is the electrical efficiency of the combined heat and power, defined as annual electricity production from combined heat and power divided by the fuel input used to produce the sum of useful heat output and electricity production from combined heat and power. Where a combined heat and power unit generates mechanical energy, the annual electricity from combined heat and power may be increased by the amount of electricity which is equivalent to that of mechanical energy.
- Ref η_E is the efficiency reference value for separate electricity production determined in accordance with section 7(6).

4. Values used for calculation of electricity from combined heat and power and the amount of primary energy savings provided by combined heat and power shall be determined on the basis of—

- (a) the expected or actual operation of the unit under normal conditions of use, or
- (b) in the case of micro-combined heat and power units, certified values.

5. The principles in accordance with which efficiency reference values for separate electricity and heat production may be determined under an order made under section 7(6) are as follows:

- (a) the comparison with separate electricity production shall be based on the principle that the same fuel categories are compared and the comparison is with the best available and economically justifiable technology for separate production of heat and electricity on the market in the year of construction of the power unit concerned;
- (b) the efficiency reference values for units older than 10 years of age shall be fixed on the reference values of units of 10 years of age;
- (c) the efficiency reference values for separate electricity production and heat production shall, if necessary, be calibrated to reflect Irish climatic conditions.”.