



Number 39 of 2013

Gas Regulation Act 2013



Number 39 of 2013

GAS REGULATION ACT 2013

CONTENTS

PART 1

PRELIMINARY AND GENERAL

SECTION

1. Short title and commencement
2. Interpretation
3. Expenses
4. Report by Minister

PART 2

NETWORK COMPANY

5. Network company
6. Memorandum and articles of association of network company
7. Directors of network company
8. Disqualification for office of director of network company
9. Member of either House of Oireachtas or European Parliament
10. Disclosure of interests by directors of network company
11. Disclosure of interests by members of staff of network company
12. Disclosure of confidential information
13. BGÉ and Gaslink to prepare network transfer plan
14. Approval by Minister of network transfer plan
15. Network transfer date
16. Transfer to network company
17. Transfers to network company after network transfer date
18. Proof of title by certificate
19. Right to production of documents of title
20. Annual report and accounts

PART 3

TRANSFER OF ENERGY BUSINESS TO ENERGY COMPANY

21. BGÉ to prepare transfer plan in relation to energy company
22. Memorandum and articles of association of energy company
23. Directors of energy company
24. Approval by Minister of transfer plan in relation to energy company
25. Transfer date in relation to energy company
26. Transfer to energy company
27. Transfers to energy company after transfer date
28. Proof of title by certificate
29. Right to production of documents of title
30. Disposal of energy company
31. Taxation of chargeable gains

PART 4

AMENDMENTS TO ACT OF 1976

32. Amendment of Act of 1976
33. Functions of Board
34. Conferring of additional functions on Board
35. Directions as to profits and financial objectives of Board
36. Accounts and audits
37. Staff of Board
38. Amendment of section 18 of Act of 1976 — Superannuation of officers and servants of Board
39. Board's capital commitments
40. Amendment of First Schedule to Act of 1976

PART 5

MISCELLANEOUS

41. Transfer of certain capital stock issued by BGÉ under section 7B(2) of the Act of 1976
42. Functions of majority-shareholding Minister in relation to network company
43. Amendment of section 2 of Act of 1987
44. Amendment of section 17 of Gas (Amendment) Act 2000
45. Amendment of section 16 of the Gas (Interim) (Regulation) Act 2002
46. Amendment of section 16 of the Water Services Act 2013
47. Further amendment of Water Services Act 2013

SCHEDULE 1

TRANSFER OF ASSETS, LICENCES, RIGHTS AND LIABILITIES OF BGÉ, AND OF GASLINK, TO NETWORK COMPANY

SCHEDULE 2

TRANSFER OF CERTAIN EMPLOYEES OF BGÉ, AND OF GASLINK, TO NETWORK COMPANY

SCHEDULE 3

TRANSFER OF ASSETS, LICENCES, RIGHTS AND LIABILITIES TO ENERGY COMPANY

SCHEDULE 4

TRANSFER OF CERTAIN EMPLOYEES TO ENERGY COMPANY

ACTS REFERRED TO

Alliance and Dublin Gas Acts 1866 to 1909
Companies (Amendment) Act 1983 (No. 13)
Companies (Amendment) Act 2009 (No. 20)
Companies Act 1963 (No. 33)
Companies Act 1990 (No. 33)
Companies Acts
Electricity Regulation Act 1999 (No. 23)
Energy (Miscellaneous Provisions) Act 1995 (No. 35)
Energy (Miscellaneous Provisions) Act 2006 (No. 40)
Environmental Protection Agency Act 1992 (No. 07)
Ethics in Public Office Act 1995 (No. 22)
European Parliament Elections Act 1997 (No. 2)
Foreshore Act 1933 (No. 12)
Gas (Amendment) Act 1987 (No. 09)
Gas (Amendment) Act 2000 (No. 26)
Gas (Interim) (Regulation) Act 2002 (No. 10)
Gas Act 1976 (No. 30)
Land And Conveyancing Law Reform Act 2009 (No. 27)
Ministers and Secretaries (Amendment) Act 2011 (No. 10)
Stamp Duties Consolidation Act 1999 (No. 31)
Superannuation Act 1859 (22 Vict., c. 26)
Superannuation Acts 1834 to 1963
Taxes Consolidation Act 1997 (No. 39)
Water Services Act 2013 (No. 6)



Number 39 of 2013

GAS REGULATION ACT 2013

An Act to provide for the reorganisation of Bord Gáis Éireann’s transmission and distribution operations and energy business, and for that purpose for the establishment of subsidiaries of Bord Gáis Éireann; to provide for the continued public ownership of natural gas networks; to provide for the further implementation of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009¹ by providing for the disposal of Bord Gáis Éireann’s energy business and for the reorganisation of the ownership of Bord Gáis Éireann; to amend the Gas Act 1976, the Gas (Amendment) Act 1987, the Gas (Amendment) Act 2000, the Gas (Interim) (Regulation) Act 2002 and the Water Services Act 2013; and to provide for related matters. [3rd December, 2013]

Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY AND GENERAL

Short title and commencement

1. (1) This Act may be cited as the Gas Regulation Act 2013.
- (2) This Act, other than *section 47*, shall come into operation on 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 purposes or different provisions.

Interpretation

2. In this Act—
 - “Act of 1976” means Gas Act 1976;
 - “Act of 1987” means Gas (Amendment) Act 1987;
 - “Act of 2002” means Gas (Interim) (Regulation) Act 2002;
 - “Act of 2006” means Energy (Miscellaneous Provisions) Act 2006;
 - “assets” means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including

¹ OJ No. L 211, 14.8.2009, p. 94.

money) and includes securities, choses in action and documents;

“BGÉ” means Bord Gáis Éireann;

“Commission” means Commission for Energy Regulation (as adapted by section 5 of the Act of 2002);

“disposal date”, in relation to an energy company, means the date on which the energy company is disposed of pursuant to *section 30*;

“distribution system” means the system owned by BGÉ and operated by Gaslink for the transport of natural gas through local or regional pipelines with a view to its delivery to customers;

“employees of BGÉ” includes employees of the Board within the meaning of section 7A of the Act of 1976;

“energy business” means the energy business owned and operated by BGÉ and its subsidiaries and includes the functions, business activities, assets and licences of BGÉ and its subsidiaries that relate to—

- (a) the supply of natural gas,
- (b) the generation of electricity,
- (c) the supply of electricity, and
- (d) the operations of the subsidiary of BGÉ registered under the laws of the United Kingdom of Great Britain and Northern Ireland as firmus energy (Distribution) Limited under company registration number 05375370;

“energy company” shall be construed in accordance with *section 21*;

“Gaslink” means Gaslink Independent System Operator Ltd., being the company formed pursuant to Regulation 5 of the European Communities (Internal Market in Natural Gas) (BGÉ) Regulations 2005 (S.I. No. 760 of 2005);

“liabilities” means liabilities, debts or obligations (whether present or future and whether vested or contingent);

“licences” includes licences, authorisations and permits under —

- (a) the Foreshore Act 1933,
- (b) the Environmental Protection Agency Act 1992,
- (c) the Electricity Regulation Act 1999,
- (d) the Gas (Amendment) Act 2000,
- (e) the Act of 2002,
- (f) the European Communities (Greenhouse Gas Emissions Trading) Regulations 2012 (S.I. No. 490 of 2012).

“majority-shareholding Minister” has the same meaning as it has in the Act of 1976;

“material interest” shall be construed in accordance with section 2(3) of the Ethics in

Public Office Act 1995;

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

“Natural Gas Directive” means Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009² concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC;

“network company” shall be construed in accordance with *section 5*;

“network transfer date” shall be construed in accordance with *section 15*;

“network transfer plan” shall be construed in accordance with *section 13*;

“ownership”, in relation to an asset, includes proprietary rights arising under a lease, a licence or a bailment of the asset;

“rights” means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent);

“transmission system” means the system owned by BGÉ and operated by Gaslink for the transport of natural gas through a high pressure pipeline, other than an upstream pipeline, with a view to delivering the gas to customers;

“subsidiary” means a subsidiary within the meaning of the Companies Acts;

“transfer date” shall be construed in accordance with *section 25*;

“transfer plan” shall be construed in accordance with *section 21*.

Expenses

3. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

Report by Minister

4. (1) The Minister shall, not later than one year after the commencement of this Part, lay before each House of the Oireachtas a report on the operation of this Act during that period.
 - (2) Notwithstanding the generality of *subsection (1)*, a report under this section shall include information on—
 - (a) the formation of the network company,
 - (b) the approval of any network transfer plan,
 - (c) the approval of any transfer plan to an energy company,
 - (d) the disposal of any energy company, and
 - (e) the appointment of the majority-shareholding Minister under *section 7B(2)(e)* of the Act of 1976.

² OJ No. L 211, 14.8.2009, p. 94.

PART 2

NETWORK COMPANY

Network company

5. (1) As soon as practicable after the commencement of this section, BGÉ shall form and register under the Companies Acts in accordance with this Part a private company limited by shares (in this Act referred to as the “network company”).
- (2) Paragraph (b) of subsection (1) of section 6 (inserted by section 3 of, and the First Schedule to, the Companies (Amendment) Act 1983) of the Companies Act 1963 shall not apply to the network company.
- (3) BGÉ shall be the sole member of the network company.
- (4) BGÉ may not transfer the ownership of the network company.

Memorandum and articles of association of network company

6. (1) The memorandum of association of the network company shall be in such form consistent with this Act as may be approved by the Minister with the consent of the Minister for Public Expenditure and Reform and shall not be inconsistent with the Natural Gas Directive.
- (2) The principal objects of the network company stated in the memorandum of association shall include the ownership and operation of the transmission system and the distribution system in a manner consistent with the Natural Gas Directive and this Act.
- (3) The articles of association of the network company shall be in such form consistent with this Act as may be approved by the Minister with the consent of the Minister for Public Expenditure and Reform and shall not be inconsistent with the Natural Gas Directive.
- (4) Notwithstanding anything contained in the Companies Acts, no alteration of the memorandum of association or the articles of association of the network company shall be valid or effectual unless made with the prior approval of the Minister given with the consent of the Minister for Public Expenditure and Reform.

Directors of network company

7. (1) The number of directors of the network company shall not be less than 4.
- (2) A person shall not be appointed or act as a director of the network company if he or she is a director or an officer of a company or other body corporate which engages, within or outside the State, in—
 - (a) the supply of natural gas,
 - (b) the shipping of natural gas,
 - (c) the production of natural gas,

- (d) the supply of electricity, or
 - (e) the generation of electricity.
- (3) Subject to *sections 8 to 12*, the appointment of a director of the network company and the termination of such an appointment shall not be valid or effectual unless made with the prior approval of the Minister having consulted with the Minister for Public Expenditure and Reform.

Disqualification for office of director of network company

8. (1) A director of the network company shall cease to be qualified, and cease, to be a director of the network company if he or she—
- (a) is adjudicated bankrupt,
 - (b) makes a composition or an arrangement with creditors,
 - (c) is sentenced by a court of competent jurisdiction to a term of imprisonment,
 - (d) is convicted of any indictable offence in relation to a company,
 - (e) is convicted of an offence involving fraud or dishonesty, whether in connection with a company or not, or
 - (f) is the subject of an order under section 160 of the Companies Act 1990.
- (2) This section is in addition to, and not in substitution for, any provision of the Companies Acts by virtue of which a person is not qualified, or shall cease, to be a director of a company.

Member of either House of Oireachtas or European Parliament

9. (1) Where a director of the network company is—
- (a) nominated as a member of Seanad Éireann,
 - (b) elected as a member of either House of the Oireachtas or to be a member of the European Parliament, or
 - (c) regarded pursuant to Part XIII of the Second Schedule to the Act of 1997 as having been elected to that Parliament,
- he or she shall thereupon cease to be a director of the network company.
- (2) Where a member of the staff of the network company is—
- (a) nominated as a member of Seanad Éireann,
 - (b) elected as a member of either House of the Oireachtas or to be a member of the European Parliament, or
 - (c) regarded pursuant to Part XIII of the Second Schedule to the Act of 1997 as having been elected to that Parliament,
- he or she shall thereupon cease to be a member of the staff of the network company.

- (3) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a member of the European Parliament shall, while he or she is so entitled or is such a member, be disqualified for being a director of the network company.
- (4) In this section “Act of 1997” means European Parliament Elections Act 1997.

Disclosure of interests by directors of network company

10. (1) Where at a meeting of the directors of the network company any of the following matters arises, namely—

- (a) an arrangement to which the network company is a party or a proposed such arrangement, or
- (b) a contract or other agreement with the network company or a proposed such contract or other agreement,

then, any director of the company present at the meeting who otherwise than in his or her capacity as such director has a material interest in the matter shall—

- (i) at the meeting disclose the fact of such interest and the nature thereof to the other directors of the network company present,
 - (ii) neither influence nor seek to influence a decision to be made in relation to the matter,
 - (iii) absent himself or herself from the meeting or that part of the meeting during which the matter is being discussed,
 - (iv) take no part in any deliberation relating to the matter, and
 - (v) not vote on a decision relating to the matter.
- (2) Where a material interest is disclosed pursuant to this section, the disclosure shall be recorded in the minutes of the meeting concerned and, for so long as the matter to which the disclosure relates is being dealt with by the meeting, the director by whom the disclosure is made shall not be counted in the quorum for the meeting.
 - (3) Where at a meeting of the directors of the network company a question arises as to whether or not a course of conduct, if pursued by a director of the company, would constitute a failure by him or her to comply with the requirements of *subsection (1)*, the question may, subject to *subsection (4)*, be determined by the chairperson of the meeting, whose decision shall be final, and where such a question is so determined, particulars of the determination shall be recorded in the minutes of the meeting.
 - (4) Where, at a meeting of the directors of the network company, the chairperson of the meeting is the director in respect of whom a question to which *subsection (3)* applies falls to be determined, then the other directors of the company attending the meeting shall choose one of their number to be chairperson of the meeting for the purpose of determining the question concerned.
 - (5) (a) Where the Minister is satisfied that a director of the network company has contravened *subsection (1)*, the Minister may, if he or she thinks fit, direct BGE

to remove that director from office and BGÉ shall comply with such direction.

- (b) Where a person is removed from office pursuant to a direction under this subsection, he or she shall thenceforth be disqualified for being a director of the network company.
- (6) Section 194 (as amended by section 2 of the Companies (Amendment) Act 2009) of the Companies Act 1963 shall not apply to a director of the network company.

Disclosure of interests by members of staff of network company

11. (1) Where a member of the staff of the network company has a material interest, otherwise than in his or her capacity as such a member, in any contract, agreement or arrangement to which the network company is a party, or any proposed such contract, agreement or arrangement, that person shall—
- (a) disclose to the network company his or her interest and the nature thereof,
 - (b) take no part in the negotiation of the contract, agreement or arrangement or in any deliberation by the network company or members of the staff of the network company in relation thereto, and
 - (c) neither influence nor seek to influence a decision to be made in relation to the matter nor make any recommendation in relation to the contract, agreement or arrangement.
- (2) *Subsection (1)* shall not apply to contracts or proposed contracts of employment of members of the staff of the network company with the network company.
- (3) Where a person contravenes this section the network company may make such alterations to the person's terms and conditions of employment as it considers appropriate or terminate the person's contract of employment.

Disclosure of confidential information

12. (1) A person shall not disclose confidential information obtained by him or her while performing functions as a director or a member of the staff of, or an adviser or consultant to, the network company, or a member of the staff of such adviser or consultant, unless he or she is duly authorised by the network company to so do.
- (2) *Subsection (1)* shall not operate to prohibit the disclosure of confidential information by a person referred to in that subsection to BGÉ.
- (3) In this section “confidential information” includes—
- (a) information that is expressed by the network company to be confidential either as regards particular information or as regards information of a particular class or description, and
 - (b) proposals of a commercial nature or tenders submitted to the network company by contractors, consultants or any other person.

BGE and Gaslink to prepare network transfer plan

13. (1) As soon as practicable after the registration of the network company under the Companies Acts, BGE and Gaslink shall prepare and submit to the Minister for approval one, or more than one, plan (in this Act referred to as a “network transfer plan”) for the transfer to the network company of such—
- (a) assets, licences, rights and liabilities, and
 - (b) staff,
- of BGE, and of Gaslink, as appear to BGE or Gaslink to be necessary for, or ancillary to, the ownership and operation by the network company of the transmission system and the distribution system.
- (2) BGE and Gaslink shall specify in the network transfer plan the items referred to in *subsection (1)* that are to be transferred by reference to—
- (a) individual assets, licences, rights and liabilities or staff,
 - (b) all or any of the assets, licences, rights and liabilities and staff (whether or not subject to exceptions) relating to a specified function, business activity, division or part of BGE or Gaslink, or
 - (c) a combination of the matters referred to in both of the foregoing paragraphs.
- (3) A network transfer plan may provide for such supplemental, incidental and consequential matters as are necessary for, or ancillary to, the transfer to the network company of the matters mentioned in *paragraphs (a) and (b) of subsection (1)* (including the order in which any transfers are to be regarded as taking effect).

Approval by Minister of network transfer plan

14. (1) The Minister may, with the consent of the Minister for Public Expenditure and Reform, approve a network transfer plan, with or without amendment.
- (2) The Minister shall not approve a network transfer plan unless he or she is satisfied that the plan provides only for the transfer of assets, licences, rights and liabilities and staff that are necessary for, or ancillary to, the ownership and operation of the transmission system and the distribution system.

Network transfer date

15. On or after approving a network transfer plan under *section 14* the Minister shall appoint a date (in this Act referred to as the “network transfer date”) to be the date on which such plan shall have effect by publishing a notice in the *Iris Oifigiúil*.

Transfer to network company

16. On the network transfer date—
- (a) *Schedule 1* has effect, with respect to the transfer of assets, licences, rights and liabilities of BGE, and of Gaslink, specified in the network transfer plan, to the

network company, and

- (b) *Schedule 2* has effect with respect to the transfer of staff of BGÉ and staff of Gaslink specified in the network transfer plan, to the network company.

Transfers to network company after network transfer date

17. (1) At any time before the first anniversary of the network transfer date BGÉ or Gaslink (each referred to in this subsection as a “relevant entity”) or both may, subject to the approval of the Minister and with the consent of the Minister for Public Expenditure and Reform, enter into an agreement in writing with the network company for the transfer from a relevant entity to the network company of any assets, licences, rights and liabilities and staff where both, or either of, BGÉ and the Minister is of the opinion that such assets, licences, rights and liabilities or staff should have been specified in the network transfer plan.
- (2) An agreement under this section takes effect on the date on which it is approved by the Minister with the consent of the Minister for Public Expenditure and Reform or on such later date as may be specified in, or determined in accordance with, the agreement and any assets, licences, rights or liabilities or staff to be transferred under the agreement are transferred on that date.
- (3) An agreement under this section does not affect the terms and conditions of employment of any employee unless such employee agrees to the proposed change.

Proof of title by certificate

18. A certificate issued by—

- (a) BGÉ or Gaslink, with the concurrence of the network company, or
(b) the network company with the concurrence of BGÉ or Gaslink,

stating that—

- (i) any asset specified in the certificate, or any interest in, or right over, any such asset, or
(ii) any right or liability so specified,

is vested in the issuer of the certificate by virtue of this Act shall be proof of that fact in the absence of evidence to the contrary.

Right to production of documents of title

19. Where a person is entitled under a transfer under *section 16* or *17* to possession of any document relating wholly or in part to the title to, or to the management of, any land or other property the ownership of which was transferred to another person under that or another transfer under either of those sections, the first-mentioned person shall be deemed to have given to the other person an acknowledgement within the meaning of section 84 of the Land and Conveyancing Law Reform Act 2009.

Annual report and accounts

20. (1) BGÉ shall include in its annual report pursuant to section 14 of the Act of 1976 a report of the proceedings of the network company in that financial year.
- (2) In keeping accounts pursuant to section 15 of the Act of 1976 BGÉ shall ensure that accounts of all moneys received or expended by the network company are identified separately.

PART 3

TRANSFER OF ENERGY BUSINESS TO ENERGY COMPANY

BGÉ to prepare transfer plan in relation to energy company

21. (1) As soon as practicable after the commencement of this section, BGÉ shall prepare and submit to the Minister for approval one, or more than one, plan (in this Act referred to as a “transfer plan”) for the transfer to one, or more than one, subsidiary of BGÉ (in this Act referred to as an “energy company”) of such—
- (a) assets, licences, rights and liabilities, and
 - (b) staff,
- of BGÉ and its subsidiaries as appear to BGÉ to be necessary for, or ancillary to, the purposes of the transfer to that company or companies of all, or a part, of the energy business.
- (2) BGÉ shall specify in a transfer plan the items referred to in *subsection (1)* that are to be transferred by reference to—
- (a) individual assets, licences, rights and liabilities or staff,
 - (b) all or any of the assets, licences, rights and liabilities and staff (whether or not subject to exceptions) relating to a specified function, business activity, division or part of BGÉ,
 - (c) all or any of the assets, licences, right and liabilities and staff (whether or not subject to exceptions) of, or relating to a specified function or business activity of, one or more than one subsidiary of BGÉ, or
 - (d) a combination of the matters referred to in the foregoing paragraphs.
- (3) A transfer plan may provide for such supplemental, incidental and consequential matters as are necessary for, or ancillary to, the transfer to an energy company of the matters mentioned in *paragraphs (a) and (b) of subsection (1)* (including the order in which any transfers are to be regarded as taking effect).

Memorandum and articles of association of energy company

22. (1) The memorandum of association of an energy company shall, from the transfer date until the disposal date, be in such form consistent with this Act as may be approved by

the Minister with the consent of the Minister for Public Expenditure and Reform.

- (2) The principal objects of an energy company stated in the memorandum of association shall be expressed to include, for the period beginning on the transfer date and ending immediately before the disposal date, the ownership and operation of that part of the energy business as is transferred to it under this Act.
- (3) The articles of association of an energy company shall, from the transfer date until the disposal date, be in such form consistent with this Act as may be approved by the Minister with the consent of the Minister for Public Expenditure and Reform.
- (4) Notwithstanding anything contained in the Companies Acts, no alteration of the memorandum or articles of association of an energy company made before the disposal date shall be valid or effectual unless made with the prior approval of the Minister given with the consent of the Minister for Public Expenditure and Reform.
- (5) The memorandum of association and the articles of association of an energy company shall not be inconsistent with the Natural Gas Directive during the period beginning on the transfer date and ending on the disposal date.

Directors of energy company

23. (1) The articles of association of an energy company shall provide that prior to its disposal date—
- (a) the number of directors of the energy company shall not be less than 3,
 - (b) only employees of BGÉ, and no other persons, shall be eligible to be directors of the energy company, and
 - (c) no remuneration shall be paid to directors of the energy company for acting as directors.
- (2) Until the disposal date the appointment of a director of an energy company or the termination of such an appointment shall not take effect until it is approved by the Minister with the consent of the Minister for Public Expenditure and Reform.

Approval by Minister of transfer plan in relation to energy company

24. (1) The Minister may, with the consent of the Minister for Public Expenditure and Reform, approve a transfer plan in relation to an energy company with or without amendment.
- (2) The Minister shall not approve a transfer plan in relation to an energy company unless he or she is satisfied that the plan provides only for the transfer of assets, licences, rights and liabilities and staff that are necessary for, or ancillary to, the purposes of the transfer to that company of all, or part, of the energy business.

Transfer date in relation to energy company

25. On or after approving a transfer plan in relation to an energy company the Minister shall appoint a date (in this Act referred to as the “transfer date”) to be the date on which such

transfer plan shall have effect by publishing a notice in the *Iris Oifigiúil*.

Transfer to energy company

26. On the transfer date—

- (a) *Schedule 3* has effect, with respect to the transfer to the energy company of assets, licences, rights and liabilities of BGÉ and its subsidiaries specified in the transfer plan, and
- (b) *Schedule 4* has effect with respect to the transfer to the energy company of staff of BGÉ and its subsidiaries specified in the transfer plan.

Transfers to energy company after transfer date

27. (1) At any time before the disposal date, BGÉ may, subject to the approval of the Minister and with the consent of the Minister for Public Expenditure and Reform, enter into an agreement in writing with an energy company for the transfer from BGÉ to the energy company of any assets, licences, rights and liabilities and staff, where both, or either of, BGÉ and the Minister is of the opinion that such assets, licences, rights and liabilities or staff should have been specified in the transfer plan.
- (2) The Minister shall not approve an agreement under this section unless he or she is satisfied that the agreement provides only for the transfer of assets, licences, rights and liabilities and staff that are necessary for, or ancillary to, the purposes of the transfer to that company of all, or part, of the energy business.
- (3) An agreement under this section takes effect on the date on which it is approved by the Minister, with the consent of the Minister for Public Expenditure and Reform or on such later date as may be specified in, or determined in accordance with, the agreement and any assets, licences, rights or liabilities or staff to be transferred under the agreement are transferred on that date.
- (4) An agreement under this section does not affect the terms and conditions of employment of any employee unless such employee agrees to the proposed change.

Proof of title by certificate

28. A certificate issued prior to the disposal date by—

- (a) BGÉ with the concurrence of an energy company, or
- (b) an energy company with the concurrence of BGÉ,

stating that—

- (i) any asset specified in the certificate, or any interest in, or right over, any such asset, or
- (ii) any right or liability so specified,

is vested in the issuer of the certificate by virtue of this Act shall be proof of that fact in the absence of evidence to the contrary.

Right to production of documents of title

29. Where a person is entitled under a transfer under *section 26* or *27* to possession of any document relating wholly or in part to the title to, or to the management of, any land or other property the ownership of which was transferred to another person under that or another transfer under either of those sections, the first-mentioned person shall be deemed to have given to the other person an acknowledgement within the meaning of section 84 of the Land and Conveyancing Law Reform Act 2009.

Disposal of energy company

30. BGÉ may, with the approval of the Minister given with the consent of the Minister for Public Expenditure and Reform, dispose of its shares in an energy company on such terms as it sees fit.

Taxation of chargeable gains

31. (1) Sections 617 and 631 of the Taxes Consolidation Act 1997 shall not apply to any transfer to, or vesting in, an energy company under *section 26(a)* and *Schedule 3*.
- (2) Section 623 of the Taxes Consolidation Act 1997 shall not apply where, on a disposal of an energy company in accordance with *section 30*, the energy company ceases to be a member of a group of companies (within the meaning of section 616 of that Act) of which BGÉ is a member.

PART 4

AMENDMENTS TO ACT OF 1976

Amendment of Act of 1976

32. The Act of 1976 is amended—

- (a) in section 2—

- (i) by inserting after the definition of “local authority” (inserted by section 15 of the Act of 2006) the following:

“ ‘majority-shareholding Minister’ means the Minister of the Government appointed from time to time by order of the Government under section 7B(2)(e);”,

and

- (ii) in the definition of “pipeline” (as amended by section 23 of the Act of 2002) by substituting “section 8(3)(e)” for “section 8(3)(f)”,

- (b) in section 6, by substituting “incurred by a Minister of the Government (other than the Minister for Finance)” for “incurred by the Minister”,

- (c) by substituting for section 7B(2) (inserted by section 16 of the Act of 2006) the following:

- “(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 any 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 5 per cent of any capital stock to the Minister without payment and the said capital stock shall be treated as fully paid up.
- (c) The Board shall issue 5 per cent of any capital stock to the Minister for Public Expenditure and Reform without payment and the said capital stock shall be treated as fully paid up.
- (d) The Board shall issue the remainder of any capital stock to the majority-shareholding Minister appointed under paragraph (e) without payment and the said capital stock shall be treated as fully paid up.
- (e) The Government may from time to time, for the purposes of implementing Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009³, by order appoint a Minister of the Government (other than the Minister or the Minister for Public Expenditure and Reform) to be the majority-shareholding Minister.”,

- (d) by substituting for section 7C (inserted by section 16 of the Act of 2006) the following:

“Exercise of powers by Ministers in respect of capital stock

- 7C. (1) Subject to the provisions of this Act, the majority-shareholding Minister, the Minister and the Minister for Public Expenditure and Reform may each, 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) The Minister and the Minister for Public Expenditure and Reform, in respect of the capital stock held by each of them, shall not directly or indirectly exercise control over the Board in carrying out its functions under section 8 and in particular shall not be entitled to appoint a member of the Board or to exercise voting rights in respect of the Board.
- (3) The majority-shareholding Minister, the Minister and the Minister for Public Expenditure and Reform shall not sell, exchange, surrender or otherwise dispose of all or any of the capital stock held by him or her under section 7B without the prior consent of the Government.”,

- (e) in section 7E (inserted by section 16 of the Act of 2006), by substituting for

³ OJ No. L 211, 14.8.2009, p. 94.

subsection (1) the following:

“(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 majority-shareholding Minister given (where the majority-shareholding Minister is not the Minister for Finance, with the approval of the Minister for Finance) having consulted with the Minister, the Minister for Public Expenditure and Reform and any other Minister of the Government who, in the opinion of the majority-shareholding Minister having regard to the functions of that other Minister, ought to be consulted.”,

- (f) by substituting for section 7G (inserted by section 16 of the Act of 2006) the following:

“7G. All amounts representing dividends or other money received by a Minister of the Government (including the majority-shareholding Minister) in respect of capital stock held by that Minister under this Act shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance thinks fit.”,

- (g) in section 8A (inserted by section 8 of the Energy (Miscellaneous Provisions) Act 1995), by substituting for subsection (6) the following:

“(6) The exercise by the Board of any power conferred on it by this section shall be subject to the prior written consent of the majority-shareholding Minister after consultation with any other Minister of the Government who, in the opinion of the majority-shareholding Minister having regard to the functions of that other Minister, ought to be consulted.

- (7) Without prejudice to the exercise by the Board of any of its functions, a subsidiary of the Board formed or established under this section or under any enactment may exercise such and so many of the Board’s functions as are provided for in the memorandum and articles of association of the subsidiary.”,

- (h) in section 13(3), by substituting “majority-shareholding Minister” for “Minister”,

- (i) in section 14, by substituting “majority-shareholding Minister” for “Minister” in each place that it occurs,

- (j) in section 20(3)(a) by substituting “the majority-shareholding Minister” for “the Minister”,

- (k) in section 23—

- (i) in subsection (1) (as amended by section 9(a) of the Energy (Miscellaneous Provisions) Act 1995 by substituting “with the prior consent of the majority-shareholding Minister, given where the majority-shareholding Minister is not the Minister for Finance with the approval of the Minister for Finance” for “with the prior consent of the Minister given with the approval of the Minister for Finance”, and
 - (ii) by substituting for subsection (3) the following:
 - “(3) The Board shall not borrow money under this section except with the prior consent of the majority-shareholding Minister given (where the majority-shareholding Minister is not the Minister for Finance, with the approval of the Minister for Finance) having consulted with the Minister, the Minister for Public Expenditure and Reform and any other Minister of the Government who, in the opinion of the majority-shareholding Minister having regard to the functions of that other Minister, ought to be consulted.”,
 - (l) by substituting for section 24 the following:
 - “24. The Board may, with the consent of the majority-shareholding Minister given (where the majority-shareholding Minister is not the Minister for Finance, with the approval of the Minister for Finance) having consulted with the Minister, the Minister for Public Expenditure and Reform and any other Minister of the Government who, in the opinion of the majority-shareholding Minister having regard to the functions of that other Minister, ought to be consulted, borrow temporarily either by arrangement with bankers or otherwise such sums as it may require for the purpose of providing for current expenditure.”,
 - (m) in section 29, by substituting for subsection (1) the following:
 - “(1) Notwithstanding anything otherwise contained in this Act, the Board shall sell, let, lease or demise or otherwise dispose of or grant a licence or right in respect of any right of working minerals which is vested in the Board (whether exclusive of any other person or otherwise) only with the consent of the majority-shareholding Minister given (where the majority-shareholding Minister is not the Minister for Finance, with the approval of the Minister for Finance) after having consulted with the Minister, the Minister for Public Expenditure and Reform and any other Minister of the Government who, in the opinion of the majority-shareholding Minister having regard to the functions of that other Minister, ought to be consulted.”,
- and
- (n) in section 38(1), by substituting “transmitted or distributed” for “supplied”.

Functions of Board

- 33.** The Act of 1976 is amended by substituting for section 8 (as amended by the European

Communities (Internal Market in Natural Gas) (BGÉ) Regulations 2005 (S.I. No. 760 of 2005) the following:

- “8. (1) (a) The Board shall own, operate, develop and maintain a system for the transmission and distribution of natural gas being a system that is both economical and efficient and appears to the Board to be requisite for the time being.
- (b) Nothing in paragraph (a) shall be construed as imposing on the Board, either directly or indirectly, any form of duty or liability enforceable by proceedings before any court to which it would not otherwise be subject.
- (2) The Board shall carry out its obligations under this Act in accordance with Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009⁴ and having regard to the need to ensure the safety and security of the transmission, distribution and supply of natural gas.
- (3) Without prejudice to the generality of subsection (1) or to any provision of this Act apart from this section, within or outside the State, and subject to any requirements of law the Board may—
- (a) transmit and distribute natural gas (whether or not such gas has been prepared, processed or treated),
- (b) liquify or otherwise prepare, process or treat natural gas,
- (c) fix, make and recover charges for any service or facility provided or thing undertaken pursuant to this section by the Board, or fix and accept subscriptions for any service or facility so provided,
- (d) attach such terms and conditions as the Board shall think fit to any service or facility provided by it,
- (e) provide, operate or maintain, or provide, operate and maintain, whether for use by the Board or any other person, such pipelines, terminals, pressure-reducing stations, off-take stations, vessels, vehicles, works, services, facilities or other things as are necessary or expedient in relation to, or ancillary to, the provision, development or maintenance of a gas transmission system and a distribution system,
- (f) provide any or all of the following services and facilities relating to the development, transmission or distribution of gas, namely, advice or assistance, research services or research or training facilities,
- (g) subject to subsection (4), subscribe or guarantee money for charitable or benevolent objects or to, or for, any institution or for any public, general or useful object,

4 OJ No. L 211, 14.8.2009, p. 94.

- (h) draw, make, accept, endorse, discount, negotiate or issue bills of exchange, promissory notes or other negotiable or transferable instruments,
 - (i) subject to subsection (5), accept a gift of money, land or other property upon such trusts and conditions (if any) as may be specified by the person making the gift,
 - (j) carry on any activity which appears to the Board to be requisite, advantageous or incidental to, or which appears to the Board to facilitate, the performance by the Board of any function under this Act.
- (4) In case the Board pursuant to subsection (3)(g)—
- (a) gives a subscription exceeding €2,000, or
 - (b) in any particular year gives for, or to, a particular object or institution two or more subscriptions the aggregate of which exceeds €2,000,
- the subscription or subscriptions, as may be appropriate, together with the object or institution to which it or they relate shall be specified in the accounts kept by the Board pursuant to this Act.
- (5) The Board shall not accept a gift pursuant to subsection (3)(i) if the trusts and conditions attached by the donor to its acceptance are inconsistent with the functions of the Board.
- (6) Where the Board proposes to transfer to another person an interest in a pipeline or a part thereof that has been constructed by it pursuant to and in accordance with a consent given under this Act the Board shall obtain the prior consent of the majority-shareholding Minister, given with the approval of the Government, for such a transfer and the majority-shareholding Minister may attach such conditions as he or she deems appropriate to such a prior consent.
- (7) In subsection (6)—
- ‘interest’ means any estate, right, title or other interest, legal or equitable and includes a licence;
- ‘transfer’ includes grant, demise and assign or, as appropriate, a grant, demise and an assignment.”.

Conferring of additional functions on Board

34. The Act of 1976 is amended by substituting for section 9 (as amended by section 57 of the Ministers and Secretaries (Amendment) Act 2011) the following:

- “9. (1) The majority-shareholding Minister may, with the approval of the Government, by order confer on the Board such functions, being related to the ownership, operation, maintenance and development of a

gas transmission and distribution system, as the majority-shareholding Minister thinks proper and specifies in the order, and any such order may provide for the performance of the function subject to conditions specified in the order and may contain such incidental and supplementary provisions as the majority-shareholding Minister thinks necessary or expedient for giving full effect to the order.

- (2) The majority-shareholding Minister may, with the approval of the Government, revoke or amend an order under this section (including an order under this subsection).
- (3) When an order under this section is proposed to be made by the majority-shareholding Minister, a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by each such House.”.

Directions as to profits and financial objectives of Board

35. The Act of 1976 is amended by substituting for section 11 (inserted by section 15 of the Act of 2002) the following:

“11. (1) (a) The majority-shareholding Minister (with, where the majority-shareholding Minister is not the Minister for Finance, the approval of the Minister for Finance) having consulted with the Minister, the Minister for Public Expenditure and Reform and any other Minister of the Government who, in the opinion of the majority-shareholding Minister having regard to the functions of that other Minister, ought to be consulted may, from time to time, give the Board such general directives concerning the financial objectives of the Board as he or she considers appropriate.

(b) The majority-shareholding Minister (with, where the majority-shareholding Minister is not the Minister for Finance, the approval of the Minister for Finance) having consulted with the Minister, the Minister for Public Expenditure and Reform and any other Minister of the Government who, in the opinion of the majority-shareholding Minister having regard to the functions of that other Minister, ought to be consulted may, from time to time, direct that the profits of the Board in a year specified in the direction shall be applied in such manner (including application for the benefit of the Exchequer) as is specified in the direction.

(2) In performing its functions the Board shall—

(a) comply with any direction under this section, and

(b) have regard to any directive under this section concerning its financial objectives.”.

Accounts and audits

36. The Act of 1976 is amended by substituting for section 15 (as amended by section 15 of the Water Services Act 2013) the following:

- “15. (1) The Board shall keep in such form as may be approved by the majority-shareholding Minister (with, where the majority-shareholding Minister is not the Minister for Finance, the approval of the Minister for Finance) having consulted with the Minister, the Minister for Public Expenditure and Reform and any other Minister of the Government who, in the opinion of the majority-shareholding Minister having regard to the functions of that other Minister, ought to be consulted all proper and usual accounts of all moneys received or expended by it.
- (2) Accounts kept in pursuance of this section shall be submitted for audit by the Board to an auditor appointed by the Board with the approval of the majority-shareholding Minister to audit the accounts which, when so audited, shall be presented by the Board to the majority-shareholding Minister who shall cause copies thereof to be laid before both Houses of the Oireachtas.
- (3) The fees of an auditor duly appointed by the Board under this section shall be paid by the Board out of moneys at its disposal.
- (4) The Board shall, if so required by the majority-shareholding Minister, furnish the majority-shareholding Minister with such information as he or she may require regarding any account submitted by the Board under this section.”.

Staff of Board

37. The Act of 1976 is amended by substituting for section 16 the following:

- “16. (1) The Board shall appoint such and so many persons to be officers and servants of the Board as the Board from time to time thinks proper.
- (2) An officer or servant of the Board shall hold his or her office or employment on such terms and conditions as the Board from time to time determines.
- (3) There shall be paid by the Board to its officers and servants such remuneration and allowances for expenses as the Board thinks fit, subject to, in the case of its chief officer (whether that officer is described as the Chief Officer or otherwise), the approval of the majority-shareholding Minister given (where the majority-shareholding Minister is not the Minister for Finance, with the approval of the Minister for Finance) having consulted with the Minister, the Minister for Public Expenditure and Reform and any other Minister of the Government who, in the opinion of the majority-shareholding Minister having regard to the functions of that other

Minister, ought to be consulted.

- (4) In determining the remuneration or allowances for expenses to be paid to its officers or servants or the terms or conditions subject to which such officers or servants hold or are to hold their employment, the Board shall have regard either to Government or nationally agreed guidelines which are for the time being extant, or to Government policy concerning remuneration and conditions of employment which is so extant, and, in addition to the foregoing, the Board shall comply with any directives with regard to such remuneration, allowances, terms or conditions which the majority-shareholding Minister may give from time to time to the Board (where, the majority-shareholding Minister is not the Minister for Finance, with the approval of the Minister for Finance) having consulted with the Minister, the Minister for Public Expenditure and Reform and any other Minister of the Government who, in the opinion of the majority-shareholding Minister having regard to the functions of that other Minister, ought to be consulted.”.

Amendment of section 18 of Act of 1976 — Superannuation of officers and servants of Board

38. Section 18 of the Act of 1976 is amended—

- (a) subject to paragraph (b), by substituting “majority-shareholding Minister” for “Minister” in each place that it occurs,
- (b) in subsections (3) and (4), by substituting “having consulted with the Minister for Public Expenditure and Reform” for “with the concurrence of the Minister for the Public Service” in each place where it occurs,
- (c) by substituting for subsection (6) the following:
- “(6) If any dispute arises as to the claim of any person to, or the amount of, any pension, gratuity or allowance payable in pursuance of a scheme under this section, such dispute shall be submitted to the majority-shareholding Minister who shall, having consulted with the Minister for Public Expenditure and Reform, decide on the matter and this decision shall be final.”,

and

- (d) by substituting for subsection (7A) (inserted by section 4 of the Act of 1987) the following:
- “(7A) In this section—
- ‘officers or servants of the Board’ and ‘officer or servant of the Board’ each includes the following:
- (a) persons who are, or were at any time, an officer or servant of the Dublin Gas Company, a company that is, or was at any time, a

subsidiary (within the meaning of the Companies Act 1963) of the Dublin Gas Company or a company whose assets are acquired at any time by the Board;

- (b) persons who are employees of Gaslink Independent System Operator Ltd., being the company formed pursuant to Regulation 5 of the European Communities (Internal Market in Natural Gas) (BGÉ) Regulations 2005 (S.I. No. 760 of 2005);
- (c) persons who are at any time prior to the disposal date in relation to an energy company (each within the meaning of the *Gas Regulation Act 2013*) employees of that energy company; and
- (d) persons who are employees of the network company (within the meaning of the *Gas Regulation Act 2013*),

‘on retirement or death’ includes in respect of retirement or death, and

‘on the resignation, retirement or death’ includes in respect of the resignation, retirement or death.”.

Board’s capital commitments

39. The Act of 1976 is amended by substituting for section 21 (as amended by section 23(1) (c) of the Act of 2002) the following:

- “21. (1) The Board shall not, without the consent of the majority-shareholding Minister given (where the majority-shareholding Minister is not the Minister for Finance, with the approval of the Minister for Finance) having consulted with the Minister, the Minister for Public Expenditure and Reform and any other Minister of the Government who, in the opinion of the majority-shareholding Minister having regard to the functions of that other Minister, ought to be consulted enter into a capital commitment the amount of which exceeds an amount specified for the time being for the purpose of this section and relating to the commitment.
- (2) The majority-shareholding Minister may from time to time (with, where the majority-shareholding Minister is not the Minister for Finance, the approval of the Minister for Finance) having consulted with the Minister, the Minister for Public Expenditure and Reform and any other Minister of the Government who, in the opinion of the majority-shareholding Minister having regard to the functions of that other Minister, ought to be consulted, specify amounts for the purposes of this section and such an amount may be so specified in relation to capital commitments generally or in relation to capital commitments of a particular class or description.
- (3) Notwithstanding the generality of subsection (1) and for the avoidance of doubt, the Board shall not construct a pipeline without the prior consent of the majority-shareholding Minister given (where the

majority-shareholding Minister is not the Minister for Finance, with the approval of the Minister for Finance) having consulted with the Minister, the Minister for Public Expenditure and Reform and any other Minister of the Government who, in the opinion of the majority-shareholding Minister having regard to the functions of that other Minister, ought to be consulted.

- (4) The majority-shareholding Minister may, by notice in writing delivered to the Board, declare that subsection (3) shall not apply to the construction of pipelines or specified pipelines or classes of pipelines in a specified area and, whenever a notice under this subsection is in force, subsection (3) shall not apply in relation to the construction of pipelines, or those pipelines or classes of pipelines specified in the notice, in the area specified in the notice.
- (5) In determining whether or not to give consent for the construction of a pipeline the majority-shareholding Minister shall have regard to—
 - (a) requirements of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009⁵,
 - (b) whether the construction of the pipeline has been approved by the Commission, and
 - (c) the energy policy objectives which the construction of the proposed pipeline is intended to achieve.
- (6) Where the majority-shareholding Minister proposes to refuse his or her consent under this section for the construction of a pipeline, he or she shall consult the Minister, the Commission and the Board and where the majority-shareholding Minister refuses consent, he or she shall provide reasons for the refusal.”.

Amendment of First Schedule to Act of 1976

40. The First Schedule to the Act of 1976 is amended—

- (a) by substituting for Article 2 (inserted by section 6 of the Act of 1987) the following:

“2. The Board shall consist of a chairman and such number of other members, not being more than 8, as the majority-shareholding Minister may determine.

2A. A person may not be appointed or act as a member of the Board if he or she is a director or an officer of a company or other body corporate which engages, within or outside the State, in—

- (a) the supply of natural gas,
- (b) the shipping of natural gas,

⁵ OJ No. L 211, 14.8.2009, p. 94.

- (c) the production of natural gas,
- (d) the supply of electricity, or
- (e) the generation of electricity.”,

(b) by substituting for Article 4 the following:

- “4. (1) The majority-shareholding Minister shall, with the approval of the Government, from time to time as occasion requires appoint a member of the Board to be chairman thereof.
- (2) The chairman of the Board shall, unless he sooner dies, resigns the office of chairman or ceases to be chairman under paragraph (4) of this Article, hold office until the expiration of his period of office as a member of the Board.
- (3) The chairman of the Board may at any time resign his office as chairman by letter sent to the majority-shareholding Minister, and the resignation shall, unless it is previously withdrawn in writing, take effect at the commencement of the meeting of the Board held next after the Board has been informed by the majority-shareholding Minister of the resignation.
- (4) Where the chairman of the Board ceases during his term of office as chairman to be a member of the Board, he shall also then cease to be chairman of the Board.”,

(c) by substituting for Article 5 the following:

- “5. Each member of the Board shall be appointed by the majority-shareholding Minister with the approval of the Government and the majority-shareholding Minister when making the appointment shall fix such member’s term of office which shall not exceed five years and, subject to the foregoing and to Articles 7 and 9 (2) of this Schedule, such member shall hold office on such terms and conditions as the majority-shareholding Minister, having consulted with the Minister for Public Expenditure and Reform, determines.”,

(d) by substituting for Article 6 the following:

- “6. A member of the Board shall be paid by the Board out of moneys at its disposal such remuneration (if any) and allowances for expenses as the majority-shareholding Minister, having consulted with the Minister for Public Expenditure and Reform, determines.”,

(e) by substituting for Article 7 the following:

- “7. The majority-shareholding Minister may, having consulted with the Minister for Public Expenditure and Reform, remove from office any member of the Board who has become incapable through ill-health of effectively performing his duties, or who has committed stated misbehaviour, or whose removal appears to the majority-shareholding

Minister to be necessary for the effective performance by the Board of its functions.”,

(f) in Articles 8, 11 and 13, by substituting “majority-shareholding Minister” for “Minister” in each place where it occurs, and

(g) by substituting for Article 25 the following:

“25. (1) The majority-shareholding Minister may, having consulted with the Minister for Public Expenditure and Reform, make a scheme for the granting of pensions, gratuities or other allowances to or in respect of the chairman and other members of the Board, being members whose duties as such are wholetime, ceasing to hold office, other than persons in respect of whom an award under the Superannuation Acts 1834 to 1963 may be made.

(2) A scheme under this Article may provide that the termination of the appointment of the chairman or of a member of the Board during that person’s term of office shall not preclude the award to him under the scheme of a pension, gratuity or other allowance.

(3) The majority-shareholding Minister may, having consulted with the Minister for Public Expenditure and Reform, amend a scheme made by him under this Article.

(4) If any dispute arises as to the claim of any person to, or the amount of, any pension, gratuity or allowance payable in pursuance of a scheme under this Article, such dispute shall be submitted to the majority-shareholding Minister who shall, having consulted with the Minister for Public Expenditure and Reform, decide on the matter and this decision shall be final.

(5) A scheme made under this Article shall be carried out by the Board in accordance with its terms.

(6) Every scheme made by the majority-shareholding Minister under this Article shall be laid before each House of the Oireachtas as soon as may be after it is made and if either House, within the next twenty-one days on which that House has sat after the scheme is laid before it, passes a resolution annulling the scheme, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(7) Where an established civil servant is definitively transferred to the Board as a member thereof, the superannuation benefits to be granted to him shall, if the majority-shareholding Minister, having consulted with the Minister for Public Expenditure and Reform, in his discretion so directs, be calculated in accordance with the provisions of the Superannuation Acts 1834 to 1963 as if, during the period of his service as a wholetime member of the Board subsequent to his transfer, he had been an established civil servant and had been paid

during that period out of moneys provided by the Oireachtas within the meaning of section 17 of the Superannuation Act 1859.”.

PART 5

MISCELLANEOUS

Transfer of certain capital stock issued by BGÉ under section 7B(2) of the Act of 1976

41. On the date on which the Government first appoints a Minister of the Government to be the majority-shareholding Minister by order under section 7B(2)(e) of the Act of 1976—
- (a) any capital stock referred to in section 7B(2)(c) of the Act of 1976 that has been issued to the Minister for Public Expenditure and Reform or which stands transferred to that Minister pursuant to section 16(4) of the Ministers and Secretaries (Amendment) Act 2011 stands transferred to the majority-shareholding Minister, and
 - (b) half of any capital stock referred to in section 7B(2)(b) of the Act of 1976 that has been issued to the Minister stands transferred to the Minister for Public Expenditure and Reform.

Functions of majority-shareholding Minister in relation to network company

42. A reference in *section 6, 7 or 10(5)(a)* to the Minister shall, from the date on which the Government first appoints a Minister of the Government to be the majority-shareholding Minister by order pursuant to section 7B(2)(e) of the Act of 1976, be construed as a reference to the majority-shareholding Minister.

Amendment of section 2 of Act of 1987

43. The Act of 1987 is amended by substituting for section 2 (as amended by section 23 of the Act of 2002) the following:
- “2. (1) The Commission may by order confer, or may refuse to confer, on one or more persons, including the Board—
- (a) functions corresponding to the functions, or such of them as the Commission considers appropriate, that are conferred on the Company by the Alliance and Dublin Gas Acts 1866 to 1909, in relation to the transmission and distribution of gas and the provision, maintenance, repair and replacement for those purposes of pipelines and the sale, hire, leasing, provision by means of hire-purchase or credit-sale, installation, repair and maintenance of gas appliances,
 - (b) any functions that, in the opinion of the Commission are incidental or ancillary to any functions conferred on the Board or the relevant person under paragraph (a) or that, in the opinion of the

Commission, are requisite or advantageous to, or facilitate, the performance by the Board of any such functions, and

- (c) any functions that, in the opinion of the Commission, are necessary or expedient for ensuring that, in the performance by the Board or the relevant person of the functions conferred on it under paragraphs (a) and (b), the safety of the public and property is, as far as is practicable, secured.
- (2) Without prejudice to the generality of paragraph (c) of subsection (1), an order under that subsection may confer on the Board or the relevant person, and members of the staff of the Board or the relevant person, duly authorised by the Board or the relevant person in that behalf, power to enter and inspect any premises and there to take such measures as they consider appropriate (including the evacuation of persons found on those premises) for the purpose of ensuring that, in the performance by the Board or the relevant person of functions conferred under paragraphs (a) and (b) of subsection (1), the safety of the public and property is, as far as is practicable, secured.
- (3) An order under subsection (1) may make provision for such incidental or ancillary matters as the Commission considers necessary or expedient and may include a provision that obstruction of, or interference with, the Board or the relevant person or members of staff in the performance of functions under this section, or failure, or refusal to comply with directions given by the Board or the relevant person or members of staff in the performance of functions under subsection (1)(c) shall be offences punishable on summary conviction by such penalties specified in the order as the court may impose.
- (4) Functions conferred on the Board or the relevant person by an order under subsection (1) may be performed only in such areas as may be specified in the order and such an order may confer on the Board or the relevant person different functions in relation to different areas.
- (5) Without prejudice to the generality of subsection (1), the Commission may refuse to make an order under that subsection conferring functions in relation to the provision of pipelines in a particular area where it determines that the capacity of existing or proposed distribution or transmission pipelines in that area provided or proposed to be provided by any person, including the Board, who is subject to an existing order under that subsection in relation to that area, represents adequate provision for reasonable expectation of demand.
- (6) (a) Subject to paragraph (b) and notwithstanding subsection (1), section 39A(1) of the Principal Act shall apply to the construction of a pipeline pursuant to and in accordance with a function conferred on the Board or the relevant person under this section as it applies to the construction of a pipeline pursuant to and in accordance with a function conferred on the Board or the relevant

person by that Act.

- (b) The Commission may by notice in writing delivered to the Board or the relevant person declare that the said section 39A(1) shall not apply to the construction pursuant to and in accordance with a function conferred on the Board or the relevant person under subsection (1) of pipelines or specified pipelines or classes of pipelines in an area in which functions conferred by an order under subsection (1) may be performed, or a specified part of that area and, whenever a notice under this paragraph is in force, the said section 39A(1) shall not apply in relation to the construction of pipelines, or those pipelines or classes of pipelines specified in the notice, in the area specified in the notice.
 - (c) The Commission may specify in a notice under paragraph (b) such conditions (if any) as it thinks desirable in relation to the construction, maintenance, repair or replacement of the pipelines or classes of pipelines to which the notice relates and the Board or the relevant person shall comply with any conditions so specified.
 - (d) The Commission may, by notice in writing delivered to the Board or the relevant person, amend or revoke a notice under this subsection (including a notice under this paragraph).
- (7) (a) The Commission may, from time to time, examine charges, and the costs underlying such charges, or any proposals to alter such charges, for natural gas supplied to customers by the holder of a supply licence granted under section 16 of the Gas (Interim) (Regulation) Act 2002.
- (b) Where it considers it necessary following an examination under paragraph (a), the Commission shall issue a direction to the holder of a supply licence granted under section 16 of the Gas (Interim) (Regulation) Act 2002 in relation to either or both the nature and the amount of any charge or proposed charge referred to in that paragraph and the holder of the supply licence shall comply with such a direction.
- (8) The Commission may, by order under this subsection, revoke or amend an order under this section (including an order under this subsection).
- (9) An order under this section shall be laid before each House of the Oireachtas as soon as may be after it is made, and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.”

Amendment of section 17 of Gas (Amendment) Act 2000

44. Section 17 of the Gas (Amendment) Act 2000 is amended by substituting for subsection (1) the following:

“(1) The Board may, with the approval of the majority-shareholding Minister given with the consent of the Minister for Public Expenditure and Reform, engage in any business activity, either alone or in conjunction with other persons, and either within or outside the State, that it considers to be advantageous to the Board save where to do so would contravene Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009⁶.”.

Amendment of section 16 of the Gas (Interim) (Regulation) Act 2002

45. Section 16 of the Gas (Interim) (Regulation) Act 2002 is amended in subsections (14)(a), (15), (16)(b) and (17)(b) by substituting “section 8(6)” for “section 8(7)” in each place where it occurs.

Amendment of section 16 of the Water Services Act 2013

46. The Water Services Act 2013 is amended by substituting for section 16 the following:

“16. (1) The subsidiary shall not, without the consent of the Minister given with the approval of the Minister for Public Expenditure and Reform, enter into a capital commitment the amount of which exceeds an amount specified for the time being for the purpose of this section and relating to the commitment.

(2) The Minister may from time to time, with the approval of the Minister for Public Expenditure and Reform, specify amounts for the purposes of this section and such an amount may be so specified in relation to capital commitments generally or in relation to capital commitments of a particular class or description.”.

Further amendment of Water Services Act 2013

47. Part 2 of the Water Services Act 2013 is amended by inserting the following section after section 18:

“Superannuation

18A. (1) As soon as may be after the coming into operation of this section, the subsidiary shall prepare and submit to the Minister a scheme or schemes for the granting of superannuation benefits to or in respect of members of staff of the subsidiary.

(2) Every such scheme shall fix the time and conditions of retirement for all persons to, or in respect of whom, superannuation benefits are payable under the scheme, and different times and conditions may be fixed in respect of different classes of persons.

⁶ OJ No. L 211, 14.8.2009, p. 94.

- (3) The subsidiary may at any time prepare and submit to the Minister a scheme amending or revoking a scheme previously submitted and approved under this section.
- (4) A scheme or amending scheme submitted to the Minister under this section shall, if approved by the Minister with the consent of the Minister for Public Expenditure and Reform, be carried out by the subsidiary in accordance with its terms.
- (5) Every scheme made under this section shall make provision for appeals.
- (6) A superannuation benefit shall not be granted by the subsidiary to or in respect of any of its staff who are members of a scheme under this section and no other arrangement shall be entered into for the provision of any superannuation benefit to such persons on their ceasing to hold office, other than in accordance with such scheme or schemes submitted and approved under this section or an arrangement approved by the Minister and the Minister for Public Expenditure and Reform.
- (7) The Minister shall cause every scheme submitted and approved under this section to be laid before each House of the Oireachtas as soon as may be after it is approved, and if either such House within the next 21 days on which that House sits after the scheme is laid before it, passes a resolution annulling the scheme, the scheme shall be annulled accordingly, but without prejudice to anything previously done thereunder.
- (8) In this section ‘superannuation benefit’ means a pension, gratuity or other allowance payable on resignation, retirement or death.”.

SCHEDULE 1

Section 16(a)

TRANSFER OF ASSETS, LICENCES, RIGHTS AND LIABILITIES OF BGÉ, AND OF GASLINK, TO NETWORK COMPANY

Transfer of ownership of certain assets and licences of BGÉ, and of Gaslink, to network company

1. (1) The ownership of those assets and licences of BGÉ, and of Gaslink, specified in the network transfer plan approved by the Minister under *section 14* is, by virtue of this paragraph, vested in the network company without the need for any conveyance, transfer, assignment or assurance.
- (2) All legal proceedings relating to the assets and licences referred to in *subparagraph (1)* begun before the network transfer date by or against BGÉ or by or against Gaslink and pending immediately before that date are taken to be legal proceedings pending by or against the network company.
- (3) Any act, matter or thing done or omitted to be done in relation to the assets and licences referred to in *subparagraph (1)* before the network transfer date by, to, or in respect of, BGÉ or Gaslink is (to the extent that that act, matter or thing has any effect) taken to have been done, or omitted to be done, by, to, or in respect of, the network company.

Transfer of certain rights and liabilities of BGÉ, and of Gaslink, to network company

2. (1) The rights and liabilities of BGÉ, and of Gaslink, specified in the transfer plan approved by the Minister under *section 14* become the rights and liabilities of the network company.
- (2) All legal proceedings relating to the rights or liabilities referred to in *subparagraph (1)* begun before the transfer date by or against BGÉ or by or against Gaslink and pending immediately before that date are taken to be legal proceedings pending by or against the network company.
- (3) Any act, matter or thing done or omitted to be done in relation to the rights or liabilities referred to in *subparagraph (1)* before the transfer date by, to, or in respect of, BGÉ or Gaslink is (to the extent that that act, matter or thing has any effect) taken to have been done, or omitted to be done, by, to, or in respect of, the network company.
- (4) A reference in any Act, statutory instrument or other document to BGÉ or Gaslink, to the extent that it relates to assets, licences, rights or liabilities that are vested in, or transferred to, the network company by the operation of *section 16* and this Schedule, is to be read as, or as including, a reference to the network company.

Change of ownership of asset not to be regarded as giving rise to remedy

3. Change in the legal or beneficial ownership of any asset, licence, right or liability because of the operation of this Act and this Schedule becomes binding on all persons even if, apart from this Act, the consent or concurrence of any other person would have been required. Such a change is not to be regarded as giving rise to any right or

remedy by a party to any document.

No attornment required in respect of certain leased land

4. If BGÉ or Gaslink is the lessor under any lease of land that becomes vested in the network company by virtue of this Schedule, the lessee is not required to attorn to the network company.

Stamp duty not chargeable

5. Stamp duty under the Stamp Duties Consolidation Act 1999 is not chargeable in respect of the vesting or transfer of any asset, licence, right or liability by virtue of this Schedule.

SCHEDULE 2

Section 16(b)

TRANSFER OF CERTAIN EMPLOYEES OF BGÉ, AND OF GASLINK, TO NETWORK COMPANY

Certain BGÉ employees and Gaslink employees transferred to network company on transfer date

1. The employment of those employees of BGÉ, and of Gaslink, who are specified in a transfer plan approved by the Minister under *section 14* is transferred to the network company by virtue of this Schedule.

This Schedule not to affect certain matters relating to staff members

2. (1) Subject to this Schedule, each person whose employment is transferred in accordance with *paragraph 1* is employed by the network company on terms and conditions no less favourable to that person than those on which the person was employed by BGÉ or by Gaslink immediately before the transfer date.
- (2) Nothing in this Schedule has the effect of breaking a person's contract of employment or continuity of employment for the purpose of applying to the person any other law relating to employment that would, apart from this Schedule, apply to the person. In particular, this Schedule does not affect a person's accrued rights that the person had immediately before the transfer date in respect of any kind of leave.

Variation of terms and conditions of transferred employees

3. (1) It is a term of employment of each transferred employee that the terms and conditions of that employment may be varied to the extent to which, and in the manner in which, the terms and conditions of the employee's employment could, immediately before the transfer date, be lawfully varied.
- (2) Nothing in this Schedule prevents the terms and conditions of a transferred employee's employment after the transfer date from being varied—
 - (a) in accordance with those terms and conditions, or
 - (b) by or under an applicable law or agreement.
- (3) In this paragraph—

“terms and conditions” includes a term existing because of *subparagraph (1)*;

“vary”, in relation to terms and conditions, includes vary by—

 - (a) omitting any of those terms and conditions,
 - (b) adding to those terms and conditions, or
 - (c) substituting new terms or conditions for any of the first-mentioned terms and conditions.

Superannuation arrangements

4. An officer or servant of BGÉ whose employment is transferred to the network company and who was immediately before the transfer, a member of a superannuation

scheme established under section 18 of the Gas Act 1976 for officers or servants of BGÉ, is entitled to continue to be a member of the scheme in accordance with its terms as are in force from time to time.

SCHEDULE 3

Section 26(a)

TRANSFER OF ASSETS, LICENCES, RIGHTS AND LIABILITIES TO ENERGY COMPANY

Transfer of ownership of certain assets and licences to energy company

1. (1) The ownership of those assets and licences specified in the transfer plan approved by the Minister under *section 24* is, by virtue of this paragraph, vested in the energy company without the need for any conveyance, transfer, assignment or assurance.
- (2) All legal proceedings relating to the assets and licences referred to in *subparagraph (1)* begun before the transfer date by or against BGÉ, a subsidiary of BGÉ or both and pending immediately before that date (save those expressly excluded in the transfer plan) are taken to be legal proceedings pending by or against the energy company.

Transfer of certain rights and liabilities to energy company

2. (1) The rights and liabilities specified in the transfer plan approved by the Minister under *section 24* become the rights and liabilities of the energy company.
- (2) All legal proceedings relating to the rights or liabilities referred to in *subparagraph (1)* begun before the transfer date by or against BGÉ, a subsidiary of BGÉ or both and pending immediately before that date (save those expressly excluded in the transfer plan) are taken to be legal proceedings pending by or against the energy company.

Change of ownership of asset not to be regarded as giving rise to remedy

3. Change in the legal or beneficial ownership of any asset, licence, right or liability because of the operation of this Act and this Schedule becomes binding on all persons even if, apart from this Act, the consent or concurrence of any other person would have been required. Such a change is not to be regarded as giving rise to any right or remedy by a party to any document. No provision of any contract shall operate or become exercisable or be contravened by reason of the enactment or operation of this Act.

No attornment required in respect of certain leased land

4. If BGÉ or a subsidiary of BGÉ is the lessor under any lease of land that becomes vested in an energy company by virtue of this Schedule, the lessee is not required to attorn to the energy company.

Stamp duty not chargeable

5. Stamp duty under the Stamp Duties Consolidation Act 1999 is not chargeable in respect of the vesting or transfer of any asset, licence, right or liability by virtue of this Schedule.

SCHEDULE 4

Section 26(b)

TRANSFER OF CERTAIN EMPLOYEES TO ENERGY COMPANY

Certain employees transferred to energy company on transfer date

1. The employment of those employees who are specified in a transfer plan approved by the Minister under *section 24* is transferred to the energy company by virtue of this Schedule.

This Schedule not to affect certain matters relating to staff members

2. (1) Subject to this Schedule, each person whose employment is transferred in accordance with *paragraph 1* is employed by the energy company on terms and conditions no less favourable to that person than those on which the person was employed immediately before the transfer date.
- (2) Nothing in this Schedule has the effect of breaking a person's contract of employment or continuity of employment for the purpose of applying to the person any other law relating to employment that would, apart from this Schedule, apply to the person. In particular, this Schedule does not affect a person's accrued rights that the person had immediately before the transfer date in respect of any kind of leave.

Variation of terms and conditions of transferred employees

3. (1) It is a term of employment of each transferred employee that the terms and conditions of that employment may be varied to the extent to which, and in the manner in which, the terms and conditions of the employee's employment could, immediately before the transfer date, be lawfully varied.
- (2) Nothing in this Schedule prevents the terms and conditions of a transferred employee's employment after the transfer date from being varied—
 - (a) in accordance with those terms and conditions, or
 - (b) by or under an applicable law or agreement.
- (3) In this paragraph—

“terms and conditions” includes a term existing because of *subparagraph (1)*;

“vary”, in relation to terms and conditions, includes vary by—

 - (a) omitting any of those terms and conditions,
 - (b) adding to those terms and conditions, or
 - (c) substituting new terms or conditions for any of the first-mentioned terms and conditions.

Superannuation arrangements

4. An officer or servant of BGÉ whose employment is transferred to an energy company and who was immediately before the transfer, a member of a superannuation scheme established under section 18 of the Gas Act 1976 for officers or servants of BGÉ, is

entitled to continue to be a member of the scheme in accordance with its terms as in force from time to time, until the disposal date in relation to the energy company.