



Number 3 of 2012

ENERGY (MISCELLANEOUS PROVISIONS) ACT 2012

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Number 3 of 2012

ENERGY (MISCELLANEOUS PROVISIONS) ACT 2012

AN ACT TO PROVIDE FOR THE PENSION ENTITLEMENTS OF EMPLOYEES OF BORD GÁIS ÉIREANN WHO TRANSFER TO GASLINK AND OF EMPLOYEES OF THE ELECTRICITY SUPPLY BOARD WHO TRANSFER TO EIRGRID PLC AND ESB NETWORKS LTD., TO AMEND THE ENERGY (MISCELLANEOUS PROVISIONS) ACT 1995 AND THE ELECTRICITY REGULATION ACT 1999, TO PROVIDE FOR THE PROMOTION OF ENERGY EFFICIENCY, TO REPEAL CERTAIN PROVISIONS OF ACTS RELATING TO GAS OR ELECTRICITY AND TO PROVIDE FOR RELATED MATTERS.

[25th February, 2012]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Energy (Miscellaneous Provisions) Act 2012. Short title and commencement.

(2) This Act comes 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.

2.—In this Act—

Definitions.

“Act of 1999” means Electricity Regulation Act 1999;

“Act of 2002” means Gas (Interim) (Regulation) Act 2002;

“Act of 2006” means Energy (Miscellaneous Provisions) Act 2006;

“Act of 2010” means Petroleum (Exploration and Extraction) Safety Act 2010;

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

“Regulations of 2009” means European Communities (Energy End-use Efficiency and Energy Services) Regulations 2009 (S.I. No. 542 of 2009).

PART 2

MISCELLANEOUS AMENDMENTS TO ENERGY ACTS

CHAPTER 1

Superannuation of transferred staff

Amendment of
Electricity Supply
Board
(Superannuation)
Act 1942.

3.—(1) The Electricity Supply Board (Superannuation) Act 1942 is amended—

(a) in section 1, by inserting after the definition of “manual worker” the following:

“ ‘persons employed by the Board’, with the exceptions mentioned in this Act or in any superannuation scheme confirmed by the Minister, includes—

(a) any person—

- (i) whose employment was transferred to EirGrid plc, under Regulation 14 of the Regulations of 2000,
- (ii) who was, immediately before the transfer a member of a superannuation scheme, and
- (iii) in respect of whom the transmission system operator has not notified the trustees under Regulation 17(10)(d) of the Regulations of 2000,

and

(b) any person serving in the Board on or before 1 January 2009—

- (i) whose employment was transferred to ESB Networks Ltd. under the transfer plan or otherwise, and
- (ii) who was, immediately before the transfer a member of a superannuation scheme;

‘ESB Networks Ltd.’ means the company formed pursuant to Regulation 3 of the European Communities (Internal Market in Electricity) (Electricity Supply Board) Regulations 2008 (S.I. No. 280 of 2008) under the name of ESB Networks Ltd. or any company replacing it;

‘Regulations of 2000’ means European Communities (Internal Market in Electricity) Regulations 2000 (S.I. No. 445 of 2000);

‘transfer plan’ means the plan prepared under Regulation 7 of the European Communities (Internal Market in

Electricity) (Electricity Supply Board) Regulations 2008 as approved by the Commission for Energy Regulation.”,

(b) in section 4, by inserting after subsection (2) the following:

“(3) A person serving in the Board on or before 1 January 2009, whose employment was transferred to ESB Networks Ltd. under the transfer plan or otherwise, who was immediately before the transfer a member of a superannuation scheme continues as a member of the scheme.

(4) A person employed by the Board, whose employment was transferred to EirGrid plc under Regulation 14 of the Regulations of 2000, in respect of whom the transmission system operator has not notified the trustees under Regulation 17(10)(d) of the Regulations of 2000, and who was immediately before the transfer a member of a superannuation scheme, shall continue to have his or her superannuation benefits and the contributions payable in respect of their membership of a scheme established under the Regulations of 2000 paid out of or into, as the case may be, the fund set up under section 7 of this Act, into which he or she paid superannuation contributions before the transfer.”.

(2) Paragraph 2(3) of Schedule 2 to the European Communities (Internal Market in Electricity) (Electricity Supply Board) Regulations 2008 (S.I. No. 280 of 2008) is revoked.

4.—The following section is inserted after section 16 of the Gas Act 1976:

Superannuation of transferred employees of Bord Gáis Éireann.

“16A.—(1) In this section—

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

‘terms and conditions’ includes a term existing under subsection (2);

‘transfer date’ means the date fixed by the Minister under subsection (3) on which the transfer plan takes effect;

‘transfer plan’ means the plan prepared under subsection (2)(a) and approved under subsection (2)(b);

‘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 and conditions for any of the first-mentioned terms and conditions.

(2) (a) The Board shall prepare a transfer plan for the transfer of assets and staff to Gaslink specified in subsection (1).

- (b) The transfer plan shall be submitted to the Minister by the Board for his or her approval.
 - (c) The employment of those officers and servants of the Board who are designated in the transfer plan is transferred to Gaslink.
 - (d) An officer or servant of the Board whose employment is transferred to Gaslink and who was, immediately before the transfer, a member of a superannuation scheme established under section 18 for officers or servants of the Board, is entitled to continue to be a member of the scheme in accordance with its terms as in force from time to time.
 - (e) Subject to this section, each person whose employment is transferred in accordance with paragraph (c) is employed by Gaslink on terms and conditions no less favourable to that person than those on which the person was employed by the Board immediately before the transfer date.
 - (f) Nothing in this section 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 section, apply to the person. In particular, this section does not affect a person's accrued rights that the person had immediately before the transfer date in respect of any kind of leave.
 - (g) 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.
 - (h) Nothing in this section prevents the terms and conditions of a transferred employee's employment after the transfer date from being varied—
 - (i) in accordance with those terms and conditions, or
 - (ii) by or under an applicable law or agreement.
- (3) The Minister may fix a date on which the transfer plan takes effect.”.

CHAPTER 2

Theft of electricity and gas and deemed contracts

Theft of electricity and gas and deemed contracts.

5.—The following sections are substituted for sections 15 and 16 of the *Energy (Miscellaneous Provisions) Act* 1995:

15.—(1) In this section and sections 16 and 16A—
 “Theft of electricity and gas and related offences.
 ‘Act of 1999’ means *Electricity Regulation Act* 1999;

‘Act of 2002’ means Gas (Interim) (Regulation) Act 2002;

‘article’ means—

- (a) any meter, line, fitting, piping, receptacle or other apparatus, or
- (b) any component of any such apparatus;

‘Bord Gáis Éireann’ includes a subsidiary of that body;

‘Commission’ means Commission for Energy Regulation;

‘contract of supply’ means a contract for the time being in force whereby—

- (a) the holder of a licence to supply electricity granted under section 14 of the Act of 1999, or
- (b) the holder of a licence to supply gas granted under section 16 of the Act of 2002,

agrees to supply electricity or gas, as the case may be, to a premises;

‘distribution system operator’ means, as the case may be—

- (a) the company formed pursuant to Regulation 3 of the European Communities (Internal Market in Electricity) (Electricity Supply Board) Regulations 2008 (S.I. No. 280 of 2008) under the name of ESB Networks Ltd., or any company duly replacing it, or
- (b) the company formed pursuant to Regulation 5 of the European Communities (Internal Market in Natural Gas) (BGE) Regulations 2005 (S.I. No. 760 of 2005) under the name of Gaslink Independent System Operator Ltd., or any company duly replacing it.

‘Electricity Supply Board’ includes a subsidiary of that body;

‘meter’ means an apparatus which registers and records or causes to be registered and recorded the quantity of electricity or gas supplied to a premises;

‘premises’ means any building or any structure, vehicle or vessel (whether mobile or not) or part of it occupied as a separate dwelling or place of business and includes any garden or portion of grounds attached to and usually occupied with the

dwelling or place of business or otherwise required for the amenity or convenience of the dwelling;

‘registered consumer of electricity or gas’ means a person who has entered into a contract of supply for the provision of electricity or gas;

‘subsidiary’ has the meaning assigned to it by the Companies Act 1963;

‘transmission system operator’ means the companies referred to in paragraph (b) of the definition of ‘distribution system operator’;

‘unlawfully interferes with’ means the doing, without legal excuse or claim of legal right, of any thing to an article, including (as the context admits) any of the following, namely—

(a) the damaging, injuring, altering or modifying of the article (including the opening or detaching of any sealing or locking device attached to the article),

(b) in the case of a meter (without prejudice to the application of paragraph (a) to such a thing)—

(i) causing an artificial alteration to the index of the meter, or

(ii) preventing the meter from duly registering and recording, or otherwise causing to be registered and recorded, a quantity of electricity or gas, as the case may be, supplied to a premises.

(2) (a) A person who dishonestly uses, or dishonestly causes to be wasted or diverted, any electricity or gas commits an offence.

(b) For the purposes of this subsection an act is done by a person dishonestly if the person does the act without legal excuse or claim of legal right.

(3) A person who unlawfully interferes with any article owned by or operated by a distribution system operator or transmission system operator as appropriate commits an offence.

(4) If, in proceedings for an offence under subsection (3), it is alleged that the defendant undertakes or procures a third party to undertake on his or her behalf—

(a) the alteration of an index to a meter owned by or operated by a distribution system operator or transmission

system operator and located in any premises or in the precincts of it, or

- (b) the prevention of such a meter from duly registering and recording or causing to be registered and recorded a quantity of either electricity or gas, as the case may be, supplied to the premises in which or in the precincts of which the meter is located,

and it is proved that, during the period that such alteration or prevention is alleged to have occurred or immediately thereafter—

- (i) an artificial means for causing such alteration or preventing such registration, as the case may be, was present in the premises or in its precincts, and
- (ii) the defendant was in occupation of the premises,

such proof shall be *prima facie* evidence, in those proceedings, of the matters referred to in paragraph (a) or (b), as the case may be.

(5) A person who, without lawful excuse, manufactures, imports, sells, offers for sale, supplies, installs, causes to be installed or has in his or her possession any thing designed or adapted—

- (a) to alter the index to any meter owned by or operated by a distribution system operator or transmission system operator as appropriate,
- (b) to prevent the due registration by such a meter of a quantity of either electricity or gas, as the case may be, supplied to any premises, or
- (c) for the purpose of imposing charges on persons for the use of electricity or gas in the absence of a contract of supply or a deemed contract under section 16A being in place which allows for the imposition of such charges,

commits an offence.

(6) (a) Where—

- (i) a registered consumer of electricity or gas,
- (ii) the holder of a licence to supply electricity issued under section 14 of the Act of 1999, or

- (iii) the holder of a licence to supply gas issued under section 16 of the Act of 2002,

has reasonable grounds for believing that a meter to which this subsection applies is not duly registering or causing to be registered a quantity of electricity or gas being supplied to the premises concerned by reason of the meter being unlawfully interfered with, he or she shall take all reasonable steps to ensure that such interference is discontinued.

- (b) In paragraph (a) ‘all reasonable steps’ includes advising the appropriate distribution system operator or transmission system operator, as the case may be, that a meter under its ownership or operation is not duly registering or causing to be registered a quantity of electricity or gas being supplied to the premises concerned.
- (c) A person who fails to comply with paragraph (a) commits an offence.
- (d) This subsection applies to a meter that—
- (i) is owned by or operated by a distribution system operator or transmission system operator, and
- (ii) is located in premises or in the precincts of premises to which either electricity or gas, as the case may be, is supplied under a contract of supply entered into by the registered consumer of electricity or gas concerned.
- (7) (a) A person who commits an offence under subsection (2), (3) or (5) is liable—
- (i) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 6 months or to both, or
- (ii) on conviction on indictment, to a fine not exceeding €150,000 or to imprisonment for a term not exceeding 5 years or to both.
- (b) A person who commits an offence under subsection (6) is liable—
- (i) on summary conviction, to a class A fine, or

(ii) on conviction on indictment, to a fine not exceeding €10,000.

(8) (a) A court before which a person is convicted of an offence under subsection (2), (3) or (6) may, in addition to any penalty it may impose under subsection (7) in respect of the offence, order the person to pay, as the case may be, to the—

(i) distribution system operator,

(ii) transmission system operator,

(iii) holder of a licence to supply electricity granted under section 14 of the Act of 1999, or

(iv) holder of a licence to supply gas granted under section 16 of the Act of 2002,

either or both of the following—

(I) such sum as it is satisfied the person owes to a body mentioned above in respect of the supply of either electricity or gas and payment of which would not have been obtained by the body if the act or acts or, as the case may be, default in respect of which the person has been convicted of the offence had not been detected, or

(II) such sum as it is satisfied will compensate such a body for any damage done to an article owned by or operated by the body, being damage that has resulted from the act or acts or, as the case may be, default in respect of which the person has been convicted of the offence.

(b) In the case of proceedings in the District Court for an offence under this section, the amount that the court may order a person to pay under this subsection in respect of the offence shall not exceed an amount equal to the difference between €5,000 and the fine (if any) it has imposed on the person in respect of the offence.

(c) Notwithstanding the generality of paragraph (a), a court the subject of that paragraph may specify a rate of interest accruing on any sum the subject of clauses (I) and (II) of that paragraph for each day that the sum

remains unpaid, such rate of interest to be that for the time being applicable to a civil judgment debt applied by that court.

- (d) When calculating the sum owed by a person under subsection (8)(a)(I), a court may have regard to the charges prescribed by the Commission under section 16A(5).
- (9) (a) A court before which a person is convicted of an offence under this section may order any thing referred to in subsection (5) which was used by the person to commit the offence or, in the case of an offence under that subsection, any thing referred to in that subsection to which the offence relates, to be forfeited and either destroyed or otherwise disposed of in such manner as the court may determine.
- (b) An order under this subsection shall not take effect until the ordinary time for instituting an appeal against the conviction or order concerned has expired or, where such an appeal is instituted, until it or any further appeal is finally decided or abandoned or the ordinary time for instituting any further appeal has expired.
- (10) Summary proceedings may be brought by—
- (a) a distribution system operator or a transmission system operator, for an offence under this section, except in the case of an offence committed by a person referred to in subparagraph (ii) or (iii) of subsection (6)(a), or
- (b) the Commission, in the case of an offence committed by a person referred to in subparagraph (ii) or (iii) of subsection (6)(a), acting either on its own initiative or following a request from—
- (i) a distribution system operator,
- (ii) a transmission system operator, or
- (iii) a holder of—
- (I) a licence to supply electricity granted under section 14 of the Act of 1999, or

- (II) a licence to supply gas granted under section 16 of the Act of 2002.

(11) Where an offence under this section or section 16 is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to, any neglect on the part of any director, manager, secretary or other officer of such body corporate or a person who was purporting to act in any such capacity, that officer or person commits an offence and is liable to be proceeded against and punished as if he or she committed the first-mentioned offence.

Entry into, and search of, premises where offence under section 15 is suspected.

16.—(1) (a) Each of the following, namely—

- (i) a distribution system operator,
- (ii) a transmission system operator, or
- (iii) the Commission,

may appoint, subject to paragraph (b), a person to be an authorised officer for the purposes of this section.

(b) A person appointed to be an authorised officer by one of the bodies referred to in paragraph (a) may only act in that capacity for the purpose of investigating offences for which the body appointing that person may bring summary proceedings in accordance with section 15(10).

(2) A person appointed under subsection (1) shall, on his or her appointment, be furnished by—

- (a) a distribution system operator,
- (b) a transmission system operator, or
- (c) the Commission,

as the case may be, 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.

(3) Subject to subsection (4), an authorised officer who suspects with reasonable cause that an offence under subsection (2), (3), (5) or (6) of section 15 has been or is being committed on or in any land, premises or vehicle (being an offence that concerns the body referred to in subsection (1) which appointed the particular authorised officer) may—

- (a) enter the land or premises or, as the case may be, stop (if necessary) and

board the vehicle and require the driver (if any) of the vehicle to take it to a place designated by the authorised officer, and such a vehicle may be detained at that place by the authorised officer for such period as he or she may consider necessary for the purposes of this subsection,

(b) search the land, premises or vehicle and there—

(i) make such inspections and carry out such tests as he or she thinks fit,

(ii) take any measurement or photograph or make any electrical or electronic recording which he or she considers necessary,

(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 and to give to him or her such information as he or she may reasonably require in regard to such documents, records or materials,

(iv) inspect and copy or extract information from documents, records or materials produced to him or her under subparagraph (iii) or which he or she finds, and

(v) seize any thing he or she finds (being a thing referred to in subsection (5) of section 15 or which is evidence of, or evidence related to, the commission of an offence under that subsection or subsection (2), (3) or (6) of that section, as the case may be),

on or within the land, premises or vehicle, for the purpose of determining whether or not an offence has taken place,

(c) where he or she is of the opinion that there is a potential danger to any person or property resulting from damage caused to any article in connection with the commission of an offence under subsection (2) or (3) of section 15, obtain the assistance (as appropriate) of any of the following—

- (i) a registered electrical contractor appointed under section 9D of the Act of 1999,
- (ii) a registered gas installer appointed by a designated body under section 9F of the Act of 1999,
- (iii) a gas emergency officer appointed under section 9I of the Act of 1999,
- (iv) a gas safety officer appointed under section 9J of the Act of 1999, or
- (v) any other person possessing expertise relevant to the potential danger posed that the authorised officer deems appropriate,

with a view to securing the protection from the potential damage of a person or property concerned.

(4) (a) The powers of an authorised officer under subsection (3) may not be exercised in respect of any premises used as a dwelling, or so much of a vehicle or premises as constitutes a dwelling, except where the authorised officer has reasonable cause to suspect that, before a warrant could be sought in relation to the dwelling under subsection (5), any thing referred to in subsection (3)(b)—

- (i) is being destroyed, disposed of or removed from the premises or vehicle, or
- (ii) is likely to be destroyed, disposed of or removed from the premises or vehicle,

or where permission has been given to the authorised officer to enter the premises or dwelling in accordance with subsection 3(c).

- (b) (i) Notwithstanding paragraph (a) or subsection (3), an authorised officer may request access to any land, premises or vehicle for the purpose of inspecting any article thereon or therein, and shall not be refused access by the owner or occupier of that land, premises or vehicle without legitimate excuse.
- (ii) For the purpose of this paragraph, the use of the premises or vehicle

concerned as a dwelling shall be regarded as a legitimate excuse.

(5) (a) Where an authorised officer in the exercise of his or her powers under this section is prevented from entering any land or premises or if an authorised officer has reason to believe that evidence of or related to a suspected offence under subsection (2), (3), (5) or (6) of section 15 may be present on or in any land or premises and that the evidence may be removed from it or destroyed or disposed of, the authorised officer or the body by whom he or she was appointed may apply to a judge of the District Court for a warrant under this subsection authorising the entry by the authorised officer onto or into the land or premises.

(b) If on application being made to him or her under this subsection, a judge of the District Court is satisfied, on information on oath of the applicant, that the authorised officer concerned has been prevented from entering such land or premises or that the authorised officer has reasonable grounds for believing the other matters referred to in paragraph (a), the judge may issue a warrant under his or her hand authorising that officer, accompanied, if the judge deems it appropriate so to provide, by such number of members of the Garda Síochána as may be specified in the warrant, at any time or times within one month from the date of the issue of the warrant, on production if so requested of the warrant, to enter, if need be by force, the land or premises concerned and exercise the powers referred to in subsection (3)(b).

(6) A person who—

(a) refuses to allow an authorised officer to enter any land or premises or board any vehicle in the exercise of his or her powers under this section, or

(b) obstructs or impedes an authorised officer in the exercise of his or her powers under this section,

commits an offence and is liable, on summary conviction, to a class A fine.

(7) Subsection (10) of section 15 with regard to summary proceedings applies to an offence under

subsection (6) as it applies to an offence under that section.

- (8) (a) The powers conferred by the preceding provisions of this section are not in substitution for any other powers standing conferred on an officer or employee of a body referred to in subsection (1), a member of the Garda Síochána or any other person by virtue of section 108 of the Electricity (Supply) Act 1927 or any other enactment in force immediately before the passing of this Act, or of any rule of law.
- (b) A person who enters any premises pursuant to subsection (2) of section 108 of the Electricity (Supply) Act 1927 has the same power to seize anything referred to in subsection (3)(b)(v) which he or she finds on the premises in the course of exercising any power conferred on him or her by the said section 108 as an authorised officer has under subsection (3).
- (9) (a) Any thing seized by an authorised officer under subsection (3)(b)(v) or by a person under subsection (8)(b) may, subject to the provisions of this subsection, be detained by that officer or the person by whom he or she is employed and either destroyed or disposed of in such manner as he or she thinks appropriate.
- (b) A thing detained pursuant to paragraph (a) shall not be destroyed or disposed of under this subsection—
- (i) in case an application is made under paragraph (c) in relation to the thing, save under and in accordance with an order of a judge of the District Court under that paragraph, or
- (ii) in case no such application is made or such an application is made but is withdrawn, before the expiration of 3 months from the date on which the thing was seized.
- (c) A person who claims an interest in a thing referred to in paragraph (a) may, not later than 3 months after the date on which the thing was seized, apply to a judge of the District Court for the District Court district in which the seizure was effected for an order directing the return to that person of the thing

or, as the case may be, enabling that person to exercise the rights in or over the thing which he or she was entitled to exercise immediately before the seizure and the said judge of the District Court shall, on the hearing of the application—

- (i) determine whether the thing is, in fact, a thing referred to in subsection (5) of section 15 or, as the case may be, a thing which is evidence of, or evidence related to, the commission of an offence under that subsection or subsection (2), (3) or (6) of that section, and
- (ii) having regard to that determination and any other relevant matters, make such order in relation to the application as he or she considers just and equitable.

(d) A judge of the District Court may adjourn the hearing of an application made to him or her under paragraph (c) until after the conclusion of any proceedings brought for an offence under section 15 in relation to the matter concerned.

Deemed
contracts.

16A.—(1) In this section—

‘contract of supply’ means an agreement entered into between a licence holder and a person for the supply of electricity or gas;

‘licence holder’ means—

- (a) the holder of a licence to supply electricity granted under section 14 of the Act of 1999, or
- (b) the holder of a licence to supply gas granted under section 16 of the Act of 2002.

(2) It is the duty of the owner or occupier of a premises for which there is a supply of electricity or gas provided to the premises by a licence holder and a contract of supply has expired in respect of the premises, if the owner or occupier has not entered into a contract of supply with the licence holder and continues to use the electricity or gas supplied to inform the licence holder of such use and to enter into a contract of supply with the licence holder or another licence holder for the supply of electricity or gas, as the case may be, to the premises.

(3) Where—

- (a) following the expiration of a contract of supply to a premises in relation to which the owner or occupier of the premises concerned was the registered consumer of electricity or gas and which has not been renewed,
- (b) a contract of supply of electricity or gas existed with a previous owner or occupier of a premises, and the current owner or occupier of the premises has not—
 - (i) requested the cancellation of that contract of supply, or
 - (ii) entered into a new contract of supply with the licence holder that was party to the previous contract of supply or with a different licence holder, or
- (c) in relation to a premises where there exists a supply of electricity or gas in respect of which a contract of supply has yet to be entered into and the current owner or occupier has not entered into a contract of supply with the licence holder concerned,

and the premises continues to be supplied with electricity or gas, the owner or occupier, as the case may be, is liable for the payment, to the licence holder, of the supply ('deemed contract') where—

- (i) the owner or occupier has been notified (by post or personal delivery) by the licence holder—
 - (I) that the premises has continued to be so supplied,
 - (II) of his or her right to enter into a contract of supply with the licence holder or with another licence holder, and
 - (III) of the terms and conditions of the contract which are deemed to exist from the date the owner or occupier began to take supply of electricity or gas,

and

- (ii) the charges imposed under the deemed contract are—
 - (I) clearly identified in relation to the usage, and

(II) do not contain any penalties.

(4) Where a deemed contract has effect the licence holder concerned may charge the owner or occupier of the premises concerned for the supply of electricity or gas, as the case may be, to the premises.

(5) Subject to any regulations made by the Commission under subsection (6), a licence holder may supply electricity or gas to a premises in accordance with the terms and conditions of a deemed contract with the owner or occupier of a premises.

(6) The Commission may, by regulations, provide for the following matters with regard to deemed contracts—

- (a) the date upon which the use of deemed contracts for the supply of electricity or gas to premises comes into effect,
- (b) the terms and conditions to be specified in any such contract, including specific terms and conditions relating to—
 - (i) a class or classes of licence holder,
 - (ii) a class or classes of occupier or owner of premises,
 - (iii) a type or types of premises,
 - (iv) the method of determination of the quantity of electricity or gas which is to be treated as supplied to the premises concerned, or
 - (v) the charges that may be imposed upon the owner or occupier of premises,
- (c) the time period from which and to which a deemed contract may have effect with respect to—
 - (i) a class or classes of licence holder,
 - (ii) a class or classes of occupier or owner of premises, or
 - (iii) a type or types of premises,
- (d) the methods through which licence holders shall advise and provide information to the owners and occupiers of premises the subject of a deemed contract and to members of the public generally, and

- (e) the procedures for the approval, amendment or review by the Commission of the format of the deemed contract used by the licence holder.

(7) Every regulation made under subsection (6) shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done under it.”.

CHAPTER 3

Electricity and Gas Safety

6.—The Act of 1999 is amended by inserting after section 9E (inserted by section 4 of the Act of 2006) the following: Electrical investigation officer.

“9EA.—(1) The Commission may appoint a person to be an electrical investigation officer for the purposes of investigating whether designated electrical works and specified works are carried out safely and adequately and by registered electrical contractors.

(2) In exercising his or her powers under this section an electrical investigation officer may enter on any land or premises at any reasonable time where he or she has reason to believe that designated electrical works or specified works have been or are being carried out and there—

- (a) make such inspections or inquiries and carry out such tests including inspection of specified or designated electrical work carried out by any person in the interests of safety, as he or she thinks fit,
- (b) take any verbal or written statement, measurement or photograph or make any electrical or electronic recording which he or she considers necessary for the purposes of any such inspection or inquiry,
- (c) take samples of electrical cabling or fittings or any other part of an electrical installation which he or she considers necessary to the inspection or inquiry,
- (d) 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, records or materials,
- (e) inspect and copy or extract information from documents, records or materials produced to him or her under paragraph (d) or which he or she finds during the course of entry on the land or into the premises concerned,

- (f) carry out such designated works or specified works or take such measures as he or she considers appropriate, including requesting the distribution system operator to disconnect or turn off the supply of electricity, for the protection of any person or any property from any danger arising from electrical works,
- (g) where he or she has carried out designated works or specified works under paragraph (f) issue a completion certificate for such works,
- (h) instruct any person to perform or refrain from performing any act, if in the opinion of the electrical investigation officer, the performance or non performance of such act is necessary for the purposes of preserving evidence or in order to reduce or prevent any danger arising from electricity.

(3) Where an electrical investigation officer enters on any land or into any premises in pursuance of his or her duties under this section, he or she shall act in a reasonable manner and shall provide a report on his or her activities and findings to either the Commission or the designated body or both as the case may be.

(4) 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 the certificate to such person for inspection.

(5) Where an electrical investigation officer enters on land or into any premises 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 that—

- (a) the land or premises, as the case may be, is left no less secure by reason of the entry, and
- (b) any damage caused by the electrical investigation officer is made good or that compensation is paid to the occupier or owner of the land concerned.

(6) A person commits an offence if he or she—

- (a) obstructs or impedes an electrical investigation officer in the exercise of his or her powers conferred by this section,
- (b) fails or refuses to comply with an instruction given by an electrical investigation officer under this section,
- (c) knowingly gives to an electrical investigation officer information which is false or misleading in a material respect, or
- (d) turns on or reconnects the supply of electricity which supply has been turned off or disconnected by the distribution system operator on the request of the electrical investigation officer without the consent of the distribution system operator.

(7) A person who commits an offence under this section is liable—

(a) on summary conviction, to a class A fine, or

(b) on conviction on indictment, to a fine not exceeding €15,000.

(8) In this section:

‘designated electrical works’ means a class of electrical works designated under section 9E(1);

‘electrical investigation officer’ means a person appointed as such under subsection (1);

‘specified works’ has the meaning assigned to it by section 9D(28).”.

7.—The Act of 1999 is amended by substituting for section 9C (inserted by section 4 of the Act of 2006) the following:

Regulation of electrical contractors by Commission regulating safety.

“9C.—(1) It is a function of the Commission to regulate the activities of electrical contractors with respect to safety.

(2) In carrying out its functions under this section, the Commission may by notice require electricity undertakings to advise and provide information to their final customers and the public in respect of the safe installation and maintenance of electrical works in such manner and frequency as the Commission, may from time to time, direct.”.

8.—Section 9J (inserted by section 13 of the Act of 2006) is amended by substituting for subsection (1) the following:

Amendment of section 9J(1) of Act of 1999.

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

(a) this section,

(b) paragraphs (ea), (eb) and (ed) of section 9(1),

(c) section 9(1G), and

(d) investigating alleged contraventions of sections 9F(4), 9F(23) and (24), 9G(3) and 9H(4).”.

9.—(1) The Act of 1999 is amended—

Amendment of sections 9L, 9M and 9N and Part IIA of Act of 1999.

(a) by substituting for sections 9L and 9M (inserted by Regulation 19 of the Regulations of 2009 and section 3(c) of the Act of 2010) the following:

“Energy efficient tariffs. 9L.—The Commission shall, through licence conditions, place a requirement on energy undertakings to ensure that their tariffs do not create incentives that may unnecessarily increase the volume of distributed or transmitted energy.

Informative
billing.

9M.—(1) The Commission shall, where it considers it appropriate, having regard to subsection (2), direct an energy undertaking to comply with the requirements of subsection (5), or part thereof, from such date and in such manner as it may specify in that direction.

(2) In determining whether to issue a direction under subsection (1), the Commission shall have regard to the likely costs to the undertaking concerned of complying with such a direction and the likely energy efficiency benefits to final customers of the actions required of the undertaking concerned.

(3) Before issuing a direction under subsection (1), the Commission shall undertake a public consultation process.

(4) Nothing in this section shall affect the responsibilities or duties of an energy undertaking under the Data Protection Acts 1988 and 2003.

(5) The Commission may, by direction under subsection (1), require an energy undertaking to do any or all of the following:

- (a) provide bills to its final customers, based on actual energy use, at such frequency as may be specified by the Commission to enable those customers to regulate their own energy consumption in a timely manner;
- (b) provide such information in or with a bill to its final customers that, in the opinion of the Commission provides a comprehensive account of the customer's current energy costs;
- (c) present bills to its final customers in a manner which, in the opinion of the Commission, is clear and easily understandable; or
- (d) provide any or all of the following information in or with its bills, contracts, or other relevant communications, in a manner which, in the opinion of the Commission, is clear and understandable—

- (i) current actual prices and actual consumption of energy,
- (ii) a comparison of the final customer's current energy consumption with that customer's consumption for the same period in the previous year, in graphic form where the Commission considers it practicable,
- (iii) a comparison of the final customer's energy use with the energy use of an average normalised or benchmarked final customer, or
- (iv) sources of information on available energy efficiency improvement measures, comparative customer profiles or objective technical specifications for energy-using equipment, including contact information and website addresses.

(6) The Commission may request that an energy undertaking provide such information, and in such format, as the Commission considers necessary for the purposes of determining whether to issue a direction under subsection (1), or for the purposes of monitoring compliance with a direction so issued.

(7) In this section a 'bill' includes a bill provided or made available to the final customer in electronic format.

(8) An energy undertaking that fails to comply with a direction issued by the Commission under subsection (1), or with a request under subsection (6), commits an offence and is liable on summary conviction to a class A fine.

(9) Where a direction under subsection (1) or a request under subsection (6) is to be issued or given to an energy undertaking, it shall be addressed to the undertaking and shall be given to the undertaking in one of the following ways—

- (a) by delivering it to the energy undertaking concerned,
- (b) by leaving it at the address at which the energy undertaking concerned carries on business,
- (c) by sending it by post in a pre-paid registered letter addressed to the energy supplier concerned at the address at which the undertaking carries on business,
- (d) if an address for the service of a direction or request has been furnished by the energy undertaking concerned, by leaving it at, or sending it by pre-paid registered post addressed to the energy undertaking at, that address, or
- (e) by sending it by means of electronic mail or a facsimile machine, to a device or facility for the reception of electronic mail or facsimiles located at the address at which the energy undertaking concerned carries on business or, if an address for the service of a direction or request has been furnished by the energy undertaking concerned, that address, but only if—
 - (i) the recipient's facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail, or
 - (ii) the sender's facsimile machine generates a message confirming successful delivery of the total number of pages of the direction or request,

and it is also given in one of the other ways mentioned in any of the preceding paragraphs.

(10) For the purposes of subsection (9), a company registered under the Companies Acts is deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body is deemed to be ordinarily resident at its principal office or place of business.

Functions of Commission under Part IIA relating to petroleum safety.
and
9N.—In addition to the functions conferred on it by section 9, the Commission has the functions specified in Part IIA relating to petroleum safety.”

(b) in Part IIA (inserted by section 3(d) of the Act of 2010) in section 13W(10) by substituting for paragraph (d) the following:

“(d) alters, suppresses or destroys any documents, records or materials (including documents stored in non-legible form) that the person has been required to produce or may reasonably expect to be required to produce, or”.

(2) Regulation 19 of the Regulations of 2009 is revoked.

CHAPTER 4

Energy efficiency

10.—In this Chapter—

Definitions
(Chapter 4).

“class of energy supplier” means—

- (a) all energy distributors and retail energy companies,
- (b) energy distributors or retail energy companies doing business in—
 - (i) a particular form of energy, or
 - (ii) a particular region or locality,
- (c) all energy distributors or all retail energy companies that—
 - (i) distribute or sell a volume of energy, or
 - (ii) employ a number of full time staff, or the equivalent,or
- (d) any of the above which have achieved a measure, standards, conditions, threshold or target set out in an energy efficiency notice;

“distribution system operator” means the holder of a licence to supply—

- (a) electricity, granted under section 14(1)(g) of the Act of 1999, or

(b) gas, granted under section 16(1)(d) of the Act of 2002;

“energy distributor” means a person, other than a distribution system operator or transmission system operator, that transports energy with a view to its delivery to final customers and to distribution stations that sell energy to final customers and subject to the foregoing, includes energy undertakings;

“energy efficiency notice” means a notice under *section 11(3)*;

“energy supplier” means an energy distributor, distribution system operator or retail energy sales company;

“energy undertaking” has the meaning assigned to it in section 2 (as amended by section 22 of the Act of 2002) of the Act of 1999;

“Fund” means Energy Efficiency Fund established under *section 14*;

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

“small energy supplier” has the meaning assigned to it in Regulation 2 of the European Communities (Energy End-use Efficiency and Energy Services) Regulations 2009 (S.I. No. 542 of 2009);

“voluntary agreement” means an agreement established under *section 12*.

Requirements on
energy suppliers.

11.—(1) This Chapter does not apply to small energy suppliers.

(2) Subject to *section 12(1)*, the Minister may require an energy supplier, or a particular class of energy supplier, to do all or any of the following—

- (a) ensure the offer and promotion to final customers of competitively priced energy services,
- (b) ensure the availability to and promotion to final customers of competitively priced energy audits,
- (c) ensure the availability to and promotion to final customers of competitively priced energy efficiency improvement measures, or
- (d) contribute to the Fund at a rate specified by the Minister.

(3) (a) Subject to *subsection (4)*, the Minister may issue a notice (“energy efficiency notice”) placing at least one of the requirements specified in *subsection (2)* on an energy supplier or on a particular class of energy supplier, as the case may be.

(b) For the purposes of *paragraph (a)* the Minister shall determine which requirement specified in *subsection (2)* is to be placed on a particular energy supplier or class of supplier.

(c) An energy efficiency notice may set the measures, standards, conditions, thresholds and targets to be achieved by the supplier in complying with the requirement.

(d) An energy efficiency notice shall—

- (i) in the case of a particular energy supplier, be served in accordance with *section 15*, and
- (ii) in the case of a class of energy supplier, be published in the *Iris Oifigiúil* and in at least 2 newspapers published in and circulating in the State.

(4) An energy supplier or class of energy supplier participating in an approved voluntary agreement is exempted from complying with any requirement specified in an energy efficiency notice. An exemption ceases where the Minister revokes approval for the voluntary agreement or the voluntary agreement ceases to operate effectively or no longer exists.

(5) Notwithstanding *subsections (3) and (4)*, all energy suppliers shall promote energy end-use efficiency to the final customers, with an emphasis on information relevant to the form of energy provided by that energy supplier and how that energy is typically used.

(6) The Minister shall monitor an energy supplier's compliance with an energy efficiency notice. The energy supplier shall cooperate and provide the Minister with all information reasonably requested by him or her in this regard.

(7) If, in the opinion of the Minister, an energy supplier has not satisfactorily complied with an energy efficiency notice, the Minister may issue a direction to the energy supplier concerned specifying the remedial action the energy supplier shall take and the timeframe for compliance with the direction.

(8) Remedial action under *subsection (7)* may include similar, alternative or additional actions to be taken by the energy supplier concerned to comply with the requirement specified in the energy efficiency notice concerned or the placing of alternative or additional requirements from those specified in *subsection (2)* on the energy supplier concerned.

(9) An energy supplier that is aggrieved by a direction issued under *subsection (7)* may, within the period of 30 days beginning on the day on which the direction is served on it, appeal to the High Court against the direction and, in determining the appeal, the judge may make any order he or she considers appropriate, including confirming the direction with or without modification, or cancelling the direction.

(10) Where an energy supplier fails to comply in full with a direction issued by the Minister under *subsection (7)* within the period specified, or fails to cooperate with the Minister, or provide the Minister with all reasonable information requested by him or her, under *subsection (6)*, the Minister may apply to the High Court for an order directing the energy supplier concerned to comply with the direction, to cooperate or to provide the information requested.

(11) The Minister shall determine the minimum rate of an energy supplier's contribution to the Fund. This determination shall take account of the estimated cost, in the opinion of the Minister, to the energy supplier concerned or to a particular class of energy supplier, of complying with a requirement under *paragraph (a), (b) or (c) of subsection (2)*. The Minister shall invite submissions from the energy supplier concerned or, at his or her discretion, from the class of energy supplier concerned, before making a determination under this subsection.

(12) An energy supplier in receipt of an energy efficiency notice, or addressed in such a notice, other than in relation to *paragraph (d)* of *subsection (2)*, may itself offer, make available or promote energy services, energy audits, or energy efficiency improvement measures, as the case may be, or may make arrangements, with the prior consent of the Minister, with another person to do so on its behalf. Notwithstanding any such arrangements with another person, the energy supplier's obligations under this section continue.

Voluntary
agreements by
energy suppliers.

12.—(1) One or more energy suppliers may establish a voluntary agreement for the purpose of promoting energy efficiency to final customers in lieu of complying with the requirements by the Minister under *section 11(2)*.

(2) A voluntary agreement shall clearly state—

- (a) the energy saving objectives of the agreement, quantified and with appropriate indications of timescale for achievement,
- (b) the energy efficiency improvement measures the party or parties to the agreement will implement to achieve the objectives of the agreement,
- (c) its monitoring, measuring and reporting procedures,
- (d) its provisions for implementing alternative or additional measures, or both, if the objectives of the agreement are not achieved or are not likely to be achieved, and
- (e) in respect of a voluntary agreement involving more than one energy supplier, the name of the energy supplier or other person who shall act as the principal point of contact with the Minister on behalf of all parties to the agreement.

(3) A voluntary agreement shall be submitted by the energy supplier concerned to the Minister for approval. Prior to such submission, the energy supplier shall, subject to any confidentiality provisions contained in the agreement, publish notice of its intentions and invite comment from any stakeholder. The Minister may give guidelines regarding such publication.

(4) The Minister may approve a voluntary agreement if he or she is satisfied that *subsections (2)* and *(3)* have been complied with and that the agreement is likely to have an effect equivalent to placing one or more of the requirements of *section 11(2)* on the energy supplier concerned.

(5) The Minister may revoke his or her approval of a voluntary agreement where, in his or her opinion—

- (a) the agreement is not having, or is not likely to have, an effect equivalent to placing one or more of the requirements of *section 11(2)* on the energy supplier concerned,
- (b) the energy supplier concerned is not complying with or is not likely to comply with the stated terms of the voluntary agreement,

(c) the energy supplier concerned has failed to comply with *subsection (7)* or to cooperate with the Minister in accordance with *subsection (8)*, or

(d) the agreement has ceased to operate effectively or no longer exists.

(6) Before issuing a revocation under *subsection (5)*, the Minister shall inform every energy supplier concerned of his or her opinion and invite a submission.

(7) Each energy supplier concerned shall submit a report to the Minister as soon as may be each year after the approval of a voluntary agreement under *subsection (4)*, or as frequently as may be specified by the Minister, detailing such matters as may be specified by the Minister in his or her approval.

(8) The Minister shall monitor an approved voluntary agreement and all parties to a voluntary agreement shall cooperate with the Minister in this regard and provide any information reasonably requested by the Minister.

13.—(1) The Minister may appoint in writing another person to perform the functions of the Minister under *sections 11* and *12* on such terms and conditions as the Minister may specify and in accordance with any guidance the Minister may issue to the person so appointed.

Performance of
Minister's functions
by other person.

(2) A person appointed under this section shall have all such powers as are conferred on the Minister under *sections 11* and *12*, unless otherwise specified by the Minister in the terms of the appointment.

(3) Where the Minister makes or withdraws an appointment under this section, he or she shall cause to be published details of such appointment or withdrawal in the *Iris Oifigiúil* and shall lay details before each House of the Oireachtas, including the terms and conditions, if any, of that appointment or withdrawal.

14.—(1) The Minister may, with the consent of the Minister for Public Expenditure and Reform, establish a fund to be known as the Energy Efficiency Fund (“Fund”).

Energy Efficiency
Fund.

(2) The Fund shall be managed and controlled by the Minister or a person acting on behalf of the Minister.

(3) The Minister shall pay into the Fund the amount of any contribution from an energy supplier under an energy efficiency notice.

(4) A statement of moneys paid into and out of the Fund shall be shown in a special note to the Appropriation Account under the Communications, Energy and Natural Resources Vote.

(5) The objectives of the Fund are—

(a) to support the delivery of energy efficiency improvement programmes and other energy efficiency improvement measures,

- (b) to promote the development of a market for energy efficiency improvement measures, and
- (c) to promote energy audits and financial instruments for energy savings.

(6) Without prejudice to the Fund's objectives, the Fund may be used for the alleviation of energy poverty (within the meaning of a document entitled "Warmer Homes — A Strategy for Affordable Energy in Ireland" published by the Department of Communications, Energy and Natural Resources).

(7) The Fund may, with the consent of the Minister for Public Expenditure and Reform, directly or through such other person as the Minister may specify, issue or provide grants, loans, financial guarantees and such other types of financial support as may be determined by the Minister, in order to further its objectives, as outlined in *subsection (5)* or for the alleviation of energy poverty or both.

(8) Grants, loans, financial guarantees and other types of financial support issued or provided under *subsection (7)*, may be so issued or provided through an energy efficiency improvement programme and subject to the terms and conditions of that programme.

(9) The Minister, or such other person as the Minister may nominate, may publicly invite proposals to avail of moneys or other financial supports from the Fund. This invitation shall outline the criteria, consistent with the objectives of the Fund, to be used to assess proposals.

(10) Without prejudice to any contractual arrangements entered into by the Fund, the Minister, with the consent of the Minister for Public Expenditure and Reform, may wind-up the Fund at any time.

(11) Any money in the Fund upon its winding-up shall be disposed of by the Minister, with the consent of the Minister for Public Expenditure and Reform, in such manner as the Minister considers appropriate in the circumstances having regard to the amount of money in the Fund and the purpose for which the Fund was established.

Service of notices
and directions.

15.—(1) Where a notice under *section 11(3)(d)(i)* or a direction under *section 11(7)* is required to be issued to an energy supplier, it shall be in writing, addressed to the supplier and given to the supplier in one of the following ways—

- (a) by delivering it to the supplier,
- (b) by leaving it at the address at which the supplier ordinarily carries on business,
- (c) by sending it by pre-paid registered post addressed to the supplier at the address at which the supplier ordinarily carries on business,
- (d) if an address for the service of notices and directions has been furnished by the supplier, by leaving it at, or sending it by pre-paid registered post addressed to that supplier at that address,

- (e) by sending it by means of electronic mail or a facsimile machine, to a device or facility for the reception of electronic mail or facsimiles located at the address at which the energy undertaking concerned carries on business or, if an address for the service of a direction or request has been furnished by the energy undertaking concerned, that address, but only if—
 - (i) the recipient’s facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail, or
 - (ii) the sender’s facsimile machine generates a message confirming successful delivery of the total number of pages of the direction or request,

and it is also given in one of the other ways mentioned in *paragraphs (a) to (d)*.

(2) For the purposes of this section, a company within the meaning of the Companies Acts shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body of persons shall be deemed to be ordinarily resident at its principal office or place of business.

16.—Part 5 of the European Communities (Energy End-use Efficiency and Energy Services) Regulations 2009 (S.I. No. 542 of 2009) is revoked. Revocation.

CHAPTER 5

LPG and Natural Gas

17.—(1) Section 2(1) (as amended by section 22 of the Act of 2002) of the Act of 1999 is amended— LPG — amendment of Act of 1999.

- (a) by inserting after the definition of “licence” the following:

“ ‘LPG incident’ means an event or occurrence of a class prescribed by regulations made by the Commission under section 9JG;

‘LPG safety licence’ means a licence granted under section 9JE;

‘LPG undertaking’ means any person who imports LPG or purchases LPG directly from a refinery within the State and makes LPG available to individual domestic or commercial final customers by way of LPG cylinder, bulk tank or via a piped LPG distribution network;”

- (b) by substituting for the definition of “Minister” the following:

“ ‘Minister’ means Minister for Communications, Energy and Natural Resources;

‘natural gas infrastructure’ means any pipeline, facility, structure or installation which is or has been established, maintained or operated, for the purpose of the supply,

storage, transmission, distribution and use of natural gas under a natural gas licence;

‘piped LPG distribution network’ means a pipeline system connected to a central storage bulk tank or LPG cylinder but not including a bulk tank or LPG cylinder as the case may be, and includes pipework above and below ground and all other equipment necessary upstream of the point of delivery and downstream of the emergency control valve, supplying gas to two or more customers;”.

(2) Section 9 of the Act of 1999 is amended—

(a) in subsection (1), by substituting for paragraphs (ea) and (eb) (inserted by section 12 of the Act of 2006) the following:

“(ea) to regulate the activities of natural gas undertakings, holders of LPG safety licences for the purposes of making LPG available via a piped LPG distribution network and natural gas installers, with respect to safety,

(eb) to promote the safety of—

(i) 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), and

(ii) LPG customers and the public generally as respects the supply and use of LPG,”

(b) in subsection (1G) (inserted by section 12 of the Act of 2006) by substituting for paragraph (a) the following:

“(a) In carrying out its functions under paragraphs (ea), (eb) and (ed) the Commission shall, having consulted with the Minister, establish and implement a LPG and natural gas safety regulatory framework, and report annually to the Minister on the functioning of such framework,”

(c) in subsection (1G) (inserted by section 12 of the Act of 2006) by substituting for subparagraph (iv) of paragraph (b) the following:

“(iv) procedures for the investigation of a LPG incident as prescribed by regulations under section 9H and any incidents involving natural gas which in the opinion of the Commission warrant such investigation,”

(d) by substituting for subsection (1H) (inserted by section 12 of the Act of 2006) the following:

“(1H) (a) In carrying out its functions under paragraphs (ea), (eb) and (ed) of subsection (1) the Commission may require natural gas undertakings and LPG 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 LPG and on the operation and maintenance of natural gas fittings and LPG fittings, and
- (ii) the detection and reporting of natural gas and LPG leaks and other faults in natural gas fittings and LPG 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 or a LPG undertaking, as the case may be, to engage in, either on its own or in concert with any other natural gas undertaking or LPG undertaking (whether or not such other undertaking operates within the State), campaigns promoting natural gas safety or LPG safety, as the case may be, which campaigns shall take such form as the Commission may specify in its direction and each natural gas undertaking or LPG undertaking concerned shall comply with any such direction.”,

(e) in section 9H (inserted by section 13 of the Act of 2006) by substituting for subsections (1) and (2) (as amended by section 26 of the Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010) the following:

“9H.—(1) The Commission may, in the performance of its functions under paragraphs (ea), (eb) and (ed) 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 LPG fittings, and
- (b) the conditions to be fulfilled before natural gas or LPG may be connected or reconnected to any premises following the installation, maintenance, modification or repair of a natural gas fitting or LPG fitting, as the case may be.”,

(f) by substituting for section 9I (inserted by section 13 of the Act of 2006) the following:

“9I.—(1) A transmission system operator or a distribution system operator in relation to natural gas or a holder of a LPG safety licence may appoint a person to be a gas emergency officer for the purposes of this section.

(2) A gas emergency officer may, subject to this section, enter and inspect any land (with reasonable 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 or LPG.

(3) A person appointed under subsection (1) shall be furnished with a certificate of his or her appointment by the system operator or LPG undertaking 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 LPG, or
- (b) a defect or possible defect in any pipeline or natural gas fitting or LPG 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 or LPG,
- (c) search for any escaped natural gas or LPG, or any leak or defect in any pipeline or natural gas fitting or LPG fitting, or
- (d) interrupt or disconnect the supply of natural gas or LPG 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 or a LPG undertaking on whose behalf the entry was made shall ensure as soon as possible after the powers have been exercised under this section that—

- (a) the land is left no less secure by reason of the entry, and
- (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 or LPG where supply has been turned off or disconnected by a gas emergency officer, without the consent of a gas emergency officer,

commits an offence.

(8) A person who commits an offence under subsection (7) is liable—

- (a) on summary conviction, to a class A fine or imprisonment for a term 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.”,

and

(g) in section 9J(2)(a) (inserted by section 13 of the Act of 2006) by inserting after subparagraph (i) the following:

“(ia) piped LPG distribution network.”.

18.—(1) The Act of 1999 is amended by inserting after section 9J (inserted by section 13 of the Act of 2006) the following: LPG and natural gas — enforcement.

“Improvement plan.

9JA.—(1) Where the Commission is of the opinion that a LPG undertaking or a natural gas undertaking or a person under the control or on behalf of that undertaking—

- (a) is not operating in accordance with the LPG or natural gas safety regulatory framework under section 9(1G), or
- (b) is contravening or has contravened or is failing to comply with or has failed to comply with any other requirement of this Part,

the Commission may give a direction in writing to the LPG undertaking or the natural gas undertaking concerned requiring it to submit to the Commission, within the time period stated in the direction, a plan (in this section referred to as an

‘improvement plan’) specifying the remedial action proposed to be taken by the LPG undertaking or the natural gas undertaking to rectify the matters set down in the direction.

(2) Where an improvement plan is submitted in accordance with subsection (1) or re-submitted under paragraph (b), the Commission shall, within 30 days, write to the LPG undertaking or the natural gas undertaking—

- (a) stating that the Commission is satisfied with the remedial action proposed to be taken, or
- (b) if the Commission is not satisfied that the remedial action proposed to be taken is adequate, directing that the plan be revised and re-submitted to the Commission within a specified time period.

(3) The Commission may withdraw a direction under this section at any time before a date specified in the direction and may extend and further extend such date.

Improvement
notice.

9JB.—(1) Where the Commission is of the opinion that—

- (a) a LPG undertaking or a natural gas undertaking has failed to comply with a direction to submit or implement an appropriate improvement plan under section 9JA, or
- (b) a LPG undertaking or a natural gas undertaking or a person under the control of or on behalf of that undertaking—
 - (i) is not operating in accordance with the LPG or natural gas safety regulatory framework under section 9(1G), or
 - (ii) is contravening or has contravened or is failing to comply with or has failed to comply with any other requirement of this Part,

the Commission may serve a written notice (in this section referred to as an ‘improvement notice’) on that LPG undertaking or natural gas undertaking.

(2) An improvement notice shall—

- (a) state that the Commission is of the opinion referred to in subsection (1),
- (b) state the reasons for that opinion,

- (c) where applicable, state that the LPG undertaking or natural gas undertaking has failed to submit or implement an improvement plan,
- (d) direct the LPG undertaking or natural gas undertaking to remedy the alleged contraventions or the matters occasioning that notice by a date specified in the notice, which shall not be earlier than the period within which an appeal may be brought under subsection (5),
- (e) contain details of the consequences, under this section of a failure to comply with the notice,
- (f) include information regarding the making of an appeal under subsection (5), and
- (g) include any other requirement that the Commission considers appropriate.

(3) An improvement notice may include directions as to the measures to be taken to remedy any contravention or matter to which the notice relates or otherwise comply with the notice.

(4) Where the Commission proposes to serve an improvement notice, it shall notify the LPG undertaking or natural gas undertaking concerned in writing of its intention to serve the improvement notice and the LPG undertaking or natural gas undertaking concerned may, within 21 days of such notification, make representations to the Commission, which shall consider them.

(5) Where the Commission decides, having considered any representations made to it under subsection (4), to serve an improvement notice, a LPG undertaking or natural gas undertaking which is aggrieved by such improvement notice may, within the period of 14 days beginning on the day on which the notice is served on it, appeal to the High Court against the notice and in determining the appeal the Court may—

- (a) if it is satisfied that in the circumstances of the case it is reasonable to do so, confirm the notice with or without modification, or
- (b) cancel the notice.

(6) Where an appeal against an improvement notice is taken, the notice shall, unless cancelled by the High Court, take effect on the day next following the day on which the notice is confirmed on appeal or the appeal is withdrawn or on the

day specified in the notice as that on which it is to come into effect, whichever is the later.

(7) Where no appeal is taken against an improvement notice, the notice shall take effect on the expiration of the period during which such an appeal may be taken or on the day specified in the notice as that on which it is to come into effect, whichever is the later.

(8) The Commission may withdraw an improvement notice at any time before the date specified in it under subsection (2)(d) and the Commission may extend or further extend that date at any time when an appeal against the notice is not pending.

(9) A person who fails to comply with an improvement notice commits an offence and is liable—

- (a) on summary conviction, to a class A fine, or
- (b) on conviction on indictment, to a fine not exceeding €25,000.

Prohibition
notice.

9JC.—(1) Where the Commission is of the opinion that an activity being or likely to be carried on by or under the control or on behalf of the holder of a LPG safety licence or a natural gas undertaking involves a substantial risk to safety, the Commission may serve a notice (in this section referred to as a ‘prohibition notice’) on that holder or natural gas undertaking.

(2) A prohibition notice shall—

- (a) state that the Commission is of the opinion referred to in subsection (1),
- (b) state the reasons for that opinion,
- (c) specify the activity, or the infrastructure, in respect of which that opinion is held,
- (d) where, in the opinion of the Commission, the matter involves a contravention, or is likely to involve a contravention, of the requirements of this section, specify the provision or provisions concerned and the reasons for that opinion,
- (e) prohibit the carrying on of the activity concerned until the matters which give rise or are likely to give rise to the risk are remedied, and

- (f) contain details of the consequences under this section of a failure to comply with the notice.
- (3) A prohibition notice may include directions—
- (a) as to the measures to be taken to remedy any contravention or matter to which the notice relates or to otherwise comply with the notice, and
- (b) to bring the notice to the attention of any person affected by it, or to the attention of the public generally.
- (4) A prohibition notice shall take effect—
- (a) if the notice so declares, immediately the notice is received by the holder of the LPG safety licence or natural gas undertaking or the person on whom it is served,
- (b) if no appeal is taken against the notice, on the expiration of the period during which such an appeal may be taken or on the day specified in the notice as that on which it is to come into effect, whichever is the later, or
- (c) in case an appeal is taken (unless the notice is cancelled by the High Court) on the day next following the day on which the notice is confirmed on appeal or the appeal is withdrawn or on the day specified in the notice as that on which it is to come into effect, whichever is the later.
- (5) The bringing of an appeal against a prohibition notice which is to take effect in accordance with subsection (4)(a) does not have the effect of suspending the operation of the notice unless—
- (a) the appellant applies to the High Court to have the operation of the notice suspended until the appeal is disposed of, and
- (b) on such application, if it thinks proper to do so, the Court directs that the operation of the notice be suspended until the appeal is disposed of.
- (6) (a) The holder of a LPG safety licence or natural gas undertaking which is aggrieved by a prohibition notice may, within the period of 7 days beginning on the day on which the notice is served on it, appeal to the High Court

against the notice and in determining the appeal the Court may—

- (i) if it is satisfied that in the circumstances of the case it is reasonable to do so, confirm the notice with or without modification, or
- (ii) cancel the notice.

(b) Where on the hearing of an appeal under this section a prohibition notice is confirmed, notwithstanding subsection (4), the High Court by which the appeal is heard may, on the application of the appellant, suspend the operation of the notice for such period as in the circumstances of the case the Court considers appropriate.

(7) The Commission may at any time withdraw a prohibition notice.

(8) A person who fails to comply with a prohibition notice commits an offence and is liable—

- (a) on summary conviction, to a class A fine, or
- (b) on conviction on indictment, to a fine not exceeding €25,000.

Restricting or prohibiting LPG or natural gas activities in emergencies.

9JD.—(1) Where the Commission considers that the risk to the safety of—

- (a) human life,
- (b) a piped LPG distribution network or natural gas infrastructure, or
- (c) property not in the ownership of the holder of a LPG safety licence or natural gas undertaking concerned,

is so serious that any of the activities of a LPG or natural gas undertaking should be restricted or should be immediately prohibited until specified measures have been taken to reduce the risk to a level which is as low as is reasonably practicable, the Commission may apply, *ex parte*, to the High Court for an order restricting or prohibiting the activities concerned.

(2) The High Court may make such interim or interlocutory order as it considers appropriate, and the Court in considering whether to make the order shall consider whether the elimination or necessary reduction of the risk concerned could be achieved by the issue of an emergency direction or a prohibition notice.

(3) Any order of the High Court under subsection (2) shall have effect notwithstanding the terms of any permission given under this Act or any other enactment for the carrying on of the activity concerned or, where the order refers to another person, the carrying out of an activity by such person.

(4) On any application for the revocation or variation of an order made under this section, the Commission shall be entitled to appear, be heard and adduce evidence.

LPG safety
licences. 9JE.—(1) For the purposes of ensuring LPG safety a person shall not make available LPG by way of a piped LPG distribution network for use by individual domestic final customers unless a LPG safety licence is in force in respect of the activity.

(2) A person who contravenes subsection (1) commits an offence and is liable—

(a) on summary conviction to a class A fine, or

(b) on conviction on indictment to a fine not exceeding €500,000.

(3) The Commission may, upon application to it, grant or refuse to grant to a LPG undertaking a LPG safety licence to make LPG available to final customers by way of a piped LPG distribution network.

(4) A LPG safety licence is granted subject to such conditions as are specified in the licence.

(5) An application for a LPG safety licence shall be—

(a) in writing and be in such form and contain such information as the Commission may request, and

(b) accompanied by such a fee, if any, as the Commission may determine under section 9JF to be appropriate, having regard to the application being made.

(6) The Commission shall make information on such fees payable under subsection (5)(b) available on the request of an applicant for a LPG safety licence.

(7) The Commission shall monitor the activities of a holder of a LPG safety licence to ensure that the holder complies with the terms and conditions of the licence.

(8) The Minister may specify by regulations the criteria in accordance with which an application

for a LPG safety licence in respect of any activity referred to in subsection (1) may be determined by the Commission.

(9) The criteria specified by the Minister under subsection (8) may relate to any or all of the following:

- (a) the safety of the piped LPG distribution network,
- (b) the qualifications of an applicant, including the technical qualifications of the applicant, and
- (c) any other criteria specified by regulations made under subsection (8).

(10) A person shall comply with any request in writing from the Commission for additional information specified by regulations made under subsection (8).

(11) A person undertaking any of the activities mentioned in subsection (1) on the commencement of this section shall apply for a LPG safety licence, within 3 months of such commencement or such other periods as may be agreed by the Commission.

(12) A holder of a LPG safety licence shall—

- (a) operate, maintain and develop such facilities or systems as may be required for the purpose of carrying out the activity for which it is licensed with due regard to safety and in accordance with the terms of the licence,
- (b) provide the Commission with sufficient information to ensure that LPG activities licensed under this section may take place in a safe and secure manner, and
- (c) provide all documents, records, accounts, estimates and other information, whether oral or written, requested from time to time by the Commission, in the form and at the times specified by the Commission, for the purpose of verifying that the holder of the licence is complying with the conditions of the licence, or as may be required by the Commission in the performance of its duties or functions imposed under this Act.

(13) The Commission shall reach a determination on the issue of a LPG safety licence under subsection (1) as soon as practicable after it has completed its assessment but no later than 6

months after the date of receipt of all information including receipt of the additional information requested under subsection (9).

(14) A LPG safety licence remains in force until it is revoked by the Commission or replaced by a new safety licence.

(15) The Commission shall, as soon as practicable after the issue of a LPG safety licence to a LPG undertaking, ensure that a copy of that licence is published in the manner prescribed by the Commission.

(16) Where—

(a) the holder of a LPG safety licence, requests the Commission to modify the terms or conditions of the licence, or

(b) the Commission is of the opinion that a LPG safety licence should be amended,

the Commission may modify the terms or conditions of the licence.

(17) The procedures to be followed before modifying LPG safety licences shall be as prescribed under sections 19 and 20 in regard to all licences and authorisations other than a modification made to give effect to an order under section 39 or 40.

Fees relating to applications for LPG safety licences.

9JF.—(1) Where a LPG undertaking submits an application for a safety licence it shall be accompanied by such fee, if any, as the Commission may determine to be appropriate, having regard to the nature of the designated LPG activity to which the safety licence relates.

(2) The level of fees shall be structured to ensure that the fee relating to the licence is sufficient to enable the Commission to recover the reasonable costs and expenses which the Commission is likely to incur by reason of its consideration of the application concerned and matters directly pertaining to the application concerned including the costs and expenses incurred in determining conditions relating to the grant or the refusal to grant a LPG safety licence.

(3) The Commission shall make information on the structure and methodology of how it has determined such fees available to the LPG undertaking concerned where requested to do so.

Regulations (LPG incident).

9JG.—(1) The Commission may make regulations relating to the reporting and investigation of LPG incidents.

(2) Each of the following is a class of event or occurrence which is a LPG incident—

- (a) the death of any person,
- (b) injury to any person which requires medical attention to be given to such person in hospital other than as an out-patient, or
- (c) loss or damage to any building, land or other property, where in the opinion of the LPG undertaking concerned the aggregate value of such loss or damage is in excess of €6,500,

resulting from the use, misuse, abuse, leakage, combustion or explosion of LPG.”.

Amendment of
Schedule to Act of
1999.

19.—(1) Schedule 1 (as amended by section 10 of the Act 2006) to the Act of 1999 is amended:

(a) by substituting for paragraph 16 the following:

“16.—For the purposes of meeting expenses properly incurred by the Commission in the discharge of its functions under this Act, the Commission may make an order (in this Act referred to as a ‘levy order’) imposing a levy to be paid each year on such class or classes of—

- (a) energy undertakings,
- (b) petroleum undertakings, or
- (c) holders of LPG safety licences,

as may be specified by the Commission in the order and separate orders may be made under this paragraph in respect of electricity undertakings, natural gas undertakings, holders of LPG safety licences and petroleum undertakings and in respect of different classes of such undertakings.”,

and

(b) in paragraph 25, by substituting for subparagraph (aa) (inserted by section 4 of the Act of 2010) the following:

“(aa) ensure, as far as is reasonably practicable, that such accounts identify separately in regard to the gas, LPG, electricity and petroleum sectors all elements of cost and revenue, with the basis of their calculation and the detailed attribution methods used, related to the discharge of the Commission’s functions under this Act.”.

CHAPTER 6

*Dissolution of Bord Gáis Éireann Subsidiary Companies and
Transitional Provisions*

20.—(1) The Minister may by order or orders dissolve any or all of the companies mentioned in the Table to this section.

Dissolution of Bord
Gáis Éireann
Subsidiary
Companies and
Transitional
Provisions.

(2) On the dissolution of a company under *subsection (1)* the following are transferred to Bord Gáis Éireann—

- (a) all rights and property (and rights to such property) held or enjoyed immediately before that day by the former company, and
- (b) all liabilities incurred before that day by the former company which had not been discharged before that day,

and, accordingly, without any further conveyance, transfer or assignment—

- (i) the said property, real and personal, shall, on that day, vest in Bord Gáis Éireann for all the estate, term or interest for which, immediately before that day, it was vested in the former company, but subject to all trusts and equities affecting the property and capable of being performed,
- (ii) those rights shall, as and from that day, be enjoyed by Bord Gáis Éireann, and
- (iii) those liabilities shall, as and from that day, be liabilities of Bord Gáis Éireann.

(3) All moneys, stocks, shares and securities transferred to Bord Gáis Éireann by this section that, immediately before the dissolution, are standing in the name of the former company shall, upon the request of Bord Gáis Éireann, be transferred into its name.

(4) Every right and liability transferred to Bord Gáis Éireann by this section may, on or after the dissolution, be sued on, recovered or enforced by or against Bord Gáis Éireann in its own name and it shall not be necessary for Bord Gáis Éireann to give notice of the transfer to the person whose right or liability is transferred by this section.

(5) Every contract or agreement made between the former company, and any other person, which is in force immediately before the dissolution shall continue in force on and after that day and shall be construed and have effect as if Bord Gáis Éireann were substituted therein for the former company or, as the case may be, its trustee or agent acting on its behalf, and shall be enforceable against Bord Gáis Éireann.

(6) Where, immediately before the dissolution, any legal proceedings are pending in any court or tribunal and the former company is a party to the proceedings, the name of Bord Gáis Éireann shall be substituted for that of the former company or, as the case may be, such trustee or agent thereof, and the proceedings shall not abate by reason of such substitution.

(7) Final accounts of a former company shall be drawn up by Bord Gáis Éireann as soon as may be after the dissolution in such form as may be approved of by the Minister, and in respect of such period or periods as may be specified by the Minister.

(8) Every order made by the Minister 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.

(9) In this section—

“dissolution” means the day upon which a company is dissolved under *subsection (1)*;

“former company” means a company dissolved under *subsection (1)* and includes any trustee or agent of the former company acting on behalf of the former company.

Table

City of Waterford Gas Company
Clonmel Gas Company Limited
Cork Gas Company
Limerick Gas Company Limited

CHAPTER 7

Amendment of National Oil Reserves Agency Act 2007

Amendment of National Oil Reserves Agency Act 2007.

21.—(1) In this section—

“Act of 2007” means the National Oil Reserves Agency Act 2007;

“Biofuels Act 2010” means section 3 of the Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010.

(2) Section 44I (inserted by the Biofuels Act 2010) of the Act of 2007 is amended—

(a) in subsection (1), by substituting “60 days” for “35 days”, and

(b) in subsection (3), by substituting “35 days” for “28 days”.

(3) Section 44J (inserted by the Biofuels Act 2010) of the Act of 2007 is amended in subsection (2), by substituting “14 days” for “28 days”.

(4) Section 44K (inserted by the Biofuels Act 2010) of the Act of 2007 is amended by inserting after subsection (2) the following:

“(2A) In order to count biofuel obligation certificates against the discharge of a biofuel obligation for any obligated period, the notice of transfer for those certificates must be submitted to the Agency within 81 days after the end of the obligation period concerned.”.

(5) Section 44M (inserted by the Biofuels Act 2010) of the Act of 2007 is amended in subsection (1), by inserting after paragraph (c) the following:

“(ca) the biofuel obligation account holder fails to comply with Regulation 7(4) of the European Union (Biofuel Sustainability Criteria) Regulations 2012 (S.I. No. 33 of 2012),”.

(6) The following section is inserted after section 67 of the Act of 2007:

“Contingency planning for an oil supply disruption. 68.—(1) The Minister may prepare contingency plans to be implemented in the event of an oil supply disruption.

(2) Each oil company and oil consumer shall assist and co-operate with the Minister, the Agency and relevant public bodies in the preparation of contingency plans for, and the response to, an oil supply disruption.

(3) Each oil company and oil consumer shall, if so directed by the Minister, furnish to him or her and the Agency such information as he or she may require in respect of the preparation of contingency plans for, and response to, an oil supply disruption.”.

CHAPTER 8

Repeals

22.—The following are repealed:

Repeals.

- (a) section 11 of the Electricity (Supply) Act 1927,
- (b) subsection (2) of section 17 of the Gas Act 1976,
- (c) paragraph (c) of section 26 of the Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010, and
- (d) paragraph (c) of section 3 of the Petroleum (Exploration and Extraction) Safety Act 2010.