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Number 40 of 2006

ENERGY (MISCELLANEOUS PROVISIONS) ACT 2006

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ENERGY (MISCELLANEOUS PROVISIONS) ACT 2006

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

[24th December, 2006]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

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

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

2.—In this Act— Definitions.

“Act of 1976” means the Gas Act 1976;

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

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

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

PART 2

AMENDMENTS TO ACT OF 1999

Functions of Commission regarding all-island energy market.

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

“Functions of Commission regarding all-island energy market.

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

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

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

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

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

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

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

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

(6) In this section—

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

‘island of Ireland’ includes its islands and seas;

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

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

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

‘relevant person’ means—

(a) any person exercising a function in relation to an energy market which corresponds to any of the functions of the Commission or the Minister under—

(i) the Electricity and Gas Regulation Acts 1999 to 2002,

(ii) European Communities (Internal Market in Electricity) Regulations 2000 and 2005,

and

(b) any person engaged in—

(i) generation, supply, including the export or import, transmission or distribution of electricity, or

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

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

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

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

“Function of Commission relating to electrical safety.
Regulation of electrical contractors.

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

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

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

(2) (a) In determining the number of persons appointed under subsection (1) the

Commission shall have regard to the costs likely to be incurred—

- (i) by the Commission in carrying out its functions under this section, and
 - (ii) by final customers.
- (b) Paragraph 16 of Schedule 1 shall apply to any costs incurred by the Commission in carrying out its functions under this section.
- (c) In paragraph (b) the words ‘any costs incurred by the Commission’ includes any moneys provided by the Commission to a designated body, following its appointment under subsection (1), to facilitate that body in establishing and carrying out its functions.

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

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

- (5) (a) The Commission shall publish criteria (in this section referred to as ‘the criteria’) relating to—
- (i) electrical safety supervision,
 - (ii) the safety standards to be achieved and maintained by electrical contractors, and
 - (iii) the procedures to be operated by a person appointed as a designated body.
- (b) The criteria to be published in connection with paragraph (a) shall include, but shall not be limited to, the following information:
- (i) the procedures to be adopted by a designated body for the registration of its members;
 - (ii) the procedures to be followed by a person applying for membership of a designated body;

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

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

- (a) inspect any work carried out by a registered electrical contractor,

- (b) monitor the training and safety standards of a person who is a registered electrical contractor,
 - (c) review training undertaken by a person engaged either as an employee or as an independent contractor of a registered electrical contractor,
 - (d) issue directions to a registered electrical contractor regarding the training to be given to or undertaken by a class or classes of persons engaged either as employees or as independent contractors,
 - (e) suspend the membership of a registered electrical contractor in a designated body where that registered electrical contractor is the subject of an investigation by that body into whether—
 - (i) work carried out by the registered electrical contractor concerned is unsafe or otherwise of an unsatisfactory standard,
 - (ii) the training of employees and independent contractors engaged by the registered electrical contractor concerned is materially inadequate, or
 - (iii) the registered electrical contractor has acted in contravention of the criteria to a material extent,
 - (f) suspend or revoke the membership of a registered electrical contractor in the designated body where that body is satisfied that any of the matters specified in subparagraphs (i) to (iii) of paragraph (e) apply as respects the contractor concerned.
- (7) (a) Where a designated body decides to suspend or revoke the membership of a registered electrical contractor in that body, such designated body shall inform, in writing, both—
- (i) the Commission, and
 - (ii) the registered electrical contractor concerned,
- of its decision to suspend or revoke the membership of a registered electrical contractor in the designated body.
- (b) A registered electrical contractor, the subject of a decision under paragraph

(a), may submit an appeal, in writing, of the decision to the Commission within 28 days of being informed of the decision.

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

(i) duly consider, and

(ii) furnish a report to the Commission on,

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

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

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

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

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

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

(a) the Appeals Officer in considering the appeal;

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

(c) the designated body when suspending or revoking the membership of a registered electrical contractor; and

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

in the criteria published under subsection (5).

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

shall be subject to the approval of the Commission.

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

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

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

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

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

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

(16) Subject to subsection (17), a designated body shall be entitled to payment of fees and charges in respect of the inspection of the works,

and those fees and charges shall be no greater than is set out in the tariff of fees and charges published by the designated body concerned.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(24) A person shall not obstruct—

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

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

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

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

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

(28) In this section—

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

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

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

Designated electrical works.

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

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

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

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

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

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

“(c) to supply electricity to final customers which is generated by that supplier or purchased by that supplier and which electricity is generated, in whole or in part, using renewable, sustainable or alternative forms of energy, in accordance with any trading arrangements provided for in regulations made under section 9(1)(d),

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

6.—The Act of 1999 is amended—

Combined heat and power.

(a) in subsection (1) of section 2—

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

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

(a) thermal energy and electrical energy,

(b) thermal energy and mechanical energy, or

(c) thermal, electrical and mechanical energy;”

and

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

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

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

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

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

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

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

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

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

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

“Combined heat and power.

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

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

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

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

- (a) in respect of the technologies referred to in paragraphs (a), (b), (c), (d) and (e) of Annex I of the Directive, such default values shall be consistent with those specified in paragraph (b) of Annex II of the Directive,
- (b) in respect of technologies other than those referred to in paragraph (a) of this subsection, such default values shall be notified to the European Commission.

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

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

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

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

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

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

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

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

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

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

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

¹O.J. L52, 21.2.2004, p.50

whole or in part, using high efficiency combined heat and power, in accordance with the trading arrangements provided for in regulations made by the Commission under section 9(1)(d),”,

and

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

Policy directions to
Commission.

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

“Policy
directions to
Commission.

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

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

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

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

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

- (a) provide a draft of the proposed direction to—
 - (i) the Commission,
 - (ii) the Joint Committee referred to in paragraph 26 of Schedule 1 of this Act, and

- (iii) any other person the Minister deems appropriate,

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

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

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

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

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

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

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

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

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

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

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

Interconnectors.

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

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

“Position of interconnectors as respects transmission system. 2A.—(1) An interconnector owned by the Board shall be part of the transmission system.

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

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

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

(a) in paragraph (g) by the substitution of “distribution system operator,” for “distribution system operator, or”,

(b) in paragraph (h) by the substitution of “public electricity supplier, or” for “public electricity supplier”, and

(c) by the insertion after paragraph (h) of the following paragraph:

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

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

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

“(1) A person shall not—

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

(b) construct an interconnector,

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

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

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

(a) to construct or reconstruct a generating station, or,

(b) to construct an interconnector,

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

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

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

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

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

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

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

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

- (a) the matters to be specified in an agreement for use of the interconnector,
- (b) the terms and conditions upon which an offer for access to the interconnector is made,
- (c) the basis upon which charges may be made for access to the interconnector,
- (d) the terms and conditions upon which applications for access are to be made

and the period of time within which an offer or refusal pursuant to an application is to be made by the interconnector operator, and

- (e) any other matters which the Commission considers necessary or expedient for the purpose of making an offer of access to the interconnector,

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

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

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

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

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

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

may, upon the application of that person, be determined by the Commission and the interconnector

operator shall comply with and be bound by any such determination.”.

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

“PART VIA

EMERGENCY MEASURES IN EVENT OF SUDDEN CRISIS

Emergency measures.

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

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

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

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

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

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

10.—(1) The Act of 1999 is amended—

Amendment of Schedule to Act of 1999.

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

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

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

(b) by the insertion, after paragraph 2 of the following paragraphs:

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

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

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

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

and

(e) in paragraph 25—

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

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

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

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

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

and

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

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

PART 3

NATURAL GAS SAFETY

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

Amendment of section 2 of Act of 1999.

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

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

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

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

Functions of Commission regarding natural gas safety.

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

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

(eb) to promote the safety of natural gas customers and the public generally as respects the supply, storage, transmission, distribution and use of natural gas (excluding such activities carried out at upstream pipelines or facilities except where such pipeline or facility is engaged in the storage of natural gas),

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

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

“(1G) (a) In carrying out its functions under subsection (1)(ea) the Commission shall, having consulted with the Minister, establish and implement a natural gas safety regulatory framework, and

report annually to the Minister on the functioning of such framework.

- (b) The framework established under paragraph (a) shall include—
- (i) a system for the inspection and testing of all natural gas transmission and distribution pipelines, storage and LNG facilities to an extent and at a frequency specified in the framework,
 - (ii) a system for the regulation, certification, ongoing inspection of the work and assessment of the competence of individual trained natural gas installers,
 - (iii) procedures for the investigation of complaints regarding the competence of any particular natural gas installer,
 - (iv) procedures for the investigation of any incidents involving natural gas which in the opinion of the Commission warrant such investigation,
 - (v) procedures relating to the making of a report to the Minister in respect of an investigation under subparagraph (iv),
 - (vi) any other matter considered necessary by the Commission.
- (c) The Commission may review or amend the framework referred to in paragraph (a) as often as it considers necessary.
- (1H) (a) In carrying out its functions under paragraphs (ea) and (eb) of subsection (1) the Commission may require natural gas undertakings to regularly advise and provide information to their final customers and the public as respects—
- (i) best practice in relation to the safe use of natural gas and on the operation and maintenance of natural gas fittings, and
 - (ii) the detection and reporting of natural gas leaks and other faults in natural gas fittings,
- in such manner as the Commission may, from time to time, direct.
- (b) Without prejudice to the generality of paragraph (a), the Commission may direct a natural gas undertaking to engage in, either on its own or in concert with any other natural gas undertaking (whether or not such other undertaking operates within the State), campaigns promoting natural gas safety, which campaigns shall take such form as the Commission may specify

in its direction and each natural gas undertaking concerned shall comply with any such direction.”.

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

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

“Regulation of gas installers.

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

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

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

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

(ii) by final customers.

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

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

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

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

such person is the designated body for the purposes of this section.

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

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

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

- (i) the procedures to be adopted by the designated body for the registration of its members;
- (ii) the procedures to be followed by a person applying for membership of the designated body;
- (iii) the services which the designated body may carry out on behalf of its members;
- (iv) the standards of training and safety to be achieved and maintained by members of the designated body and the procedures to be followed by the designated body in monitoring such standards;
- (v) the procedures to be followed by the designated body for the inspection of any work carried out by one of its members;
- (vi) the procedures to be followed by the designated body in connection with the suspension or revocation of the membership of one of its members;
- (vii) the matters to be covered by a completion certificate in respect of different categories or classes of gas works and the circumstances in which each such class of certificate shall be used;

- (viii) the type of accounts to be kept by the designated body, and the manner in which such accounts should be audited;
 - (ix) the method by which the accounts kept under subparagraph (viii) should be published; and
 - (x) the procedures to be followed, and the records to be maintained, by the designated body or its members (where appropriate), in connection with subparagraphs (i) to (ix).
- (c) The Commission may review or amend the criteria as often as it considers necessary.

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

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

the designated body shall inform, in writing, both—

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

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

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

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

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

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

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

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

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

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

- (a) the Appeals Officer in considering the appeal,

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

in the criteria published under subsection (5).

- (10) (a) The tariff of fees and charges imposed by the designated body relating to—
 - (i) membership of a gas installer in the body,
 - (ii) registration of a gas installer as a registered gas installer,
 - (iii) inspections of gas works, and
 - (iv) any service provided to a member of the designated body by or on behalf of the body,

shall be subject to the approval of the Commission.

- (b) The designated body may impose fees and charges under paragraph (a) of different amounts in respect of different categories of membership, registration or service as the Commission may specify in the criteria.
- (c) All expenses incurred by the designated body in carrying out any of its functions under this section shall be defrayed by the designated body out of funds at its disposal which are obtained in accordance with paragraph (a).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(23) A person shall not obstruct—

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

(24) A person shall not—

- (a) describe himself or herself as a registered gas installer, or

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

unless that person is a member of the designated body.

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

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

(26) In this section—

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

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

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

Gas works.

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

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

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

- (a) a registered gas installer,
- (b) a gas transmission system operator carrying out its functions in accordance with the terms and conditions of the relevant licence,
- (c) a gas distribution system operator carrying out its functions in accordance with the terms and conditions of the relevant licence,

(d) a gas emergency officer appointed under section 9I performing his or her duties, or

(e) a gas safety officer appointed under section 9J performing his or her functions under that section.

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

(a) on summary conviction to a fine not exceeding €5,000 or a term of imprisonment not exceeding 6 months or to both, or

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

Regulations relating to gas safety.

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

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

(a) specifications or requirements regarding the installation or maintenance of natural gas fittings, and

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

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

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

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

(a) on summary conviction to a fine not exceeding €5,000 or a term of imprisonment not exceeding 6 months or to both, or

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

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

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

(i) in the case of a dwelling:

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

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

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

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

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

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

and

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

(c) For the purposes of this subsection—

- (i) the term ‘business’ is to be interpreted in accordance with the meaning given it by section 3 of the Landlord and Tenant (Amendment) Act 1980,
- (ii) the term ‘dwelling’ is to be interpreted in accordance with the meaning given it by section 4 of the Residential Tenancies Act 2004,
- (iii) the terms ‘lease’, ‘landlord’, ‘tenant’, and ‘tenancy’ as they are used in paragraph (b)(i), are to be interpreted in accordance with the meaning given to them by section 5 of the Residential Tenancies Act 2004, and
- (iv) the terms ‘lease’, ‘lessee’, ‘landlord’ and ‘tenant’ as they are used in paragraph (b)(ii) are to be interpreted in accordance with the meaning given to them by section 3 of the Landlord and Tenant (Amendment) Act 1980.

Gas
emergency
officers.

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

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

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

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

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

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

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

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

- (a) that the land is left no less secure by reason of the entry,

- (b) any damage caused by the gas emergency officer is made good or that compensation is paid to the occupier or owner of the land concerned.

(7) A person who—

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

is guilty of an offence.

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

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

Gas safety officers.

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

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

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

- (a) enter and inspect any land (with force if he or she considers it necessary in the circumstances) without giving notice or obtaining the consent of any person, and there inspect any—
 - (i) natural gas pipeline,

- (ii) natural gas installation or facility (including a storage facility),
- (iii) natural gas fitting, or
- (iv) ventilation fittings (whether mechanical or otherwise) associated with or required for the safe operation of a natural gas fitting,

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

(b) enter on any land at any reasonable time and there—

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

(v) take samples of natural gas.

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

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

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

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

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

(6) A person who—

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

is guilty of an offence.

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

- (a) on summary conviction to a fine not exceeding €5,000 or a term of imprisonment not exceeding 6 months or to both, or

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

Extension of gas safety provisions to liquefied petroleum gas.

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

“Extension of gas safety provisions to liquefied petroleum gas.

9K.—A reference in—

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

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

PART 4

AMENDMENT OF GAS ACT 1976

Amendment of section 2 of Act of 1976.

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

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

“harbour authority” means—

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

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

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

Power of Bord Gáis Éireann to create capital stock.

“Definitions.

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

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

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

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

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

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

Power to create and issue capital stock.

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

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

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

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

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

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

(2) Subject to the provisions of this Act, the Minister for Communications, Marine and Natural Resources may, in respect of the capital stock held by him or her, exercise all the rights or powers of

a holder of such capital stock and, where such right or power is exercisable by attorney, exercise it by his or her attorney.

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

Conversion of capital stock into company shares.

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

Arrangements relating to rights and obligations relating to capital stock.

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

- (a) the terms and conditions relating to the creation of capital stock, and
- (b) the rights and obligations attaching to the capital stock,

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

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

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

Power of Board to establish approved scheme.

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

Payment of dividend into Exchequer.

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

for the benefit of the Exchequer in such manner as the Minister for Finance may direct.”.

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

Amendment of section 10A of Act of 1976.

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

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

- (i) the holder of a natural gas licence under section 16 of the Gas (Interim) (Regulation) Act 2002, for the purpose of carrying out any activity for which the holder is licensed,
- (ii) the holder of a petroleum lease under section 13 of the Petroleum and Other Minerals Development Act 1960, for the purpose of carrying out any activity connected with the lease,
- (iii) a person in respect of whom an order has been made under section 2(1) of the Gas (Amendment) Act 1987, for the purpose of carrying out the functions conferred on the person by the order,
- (iv) a person who operates a gas-fired generating station, irrespective of its annual consumption level, for the purpose of providing energy for the generation of electricity at that station,
- (v) a customer purchasing natural gas which is not exclusively for his or her household use, and
- (vi) subject to the provisions of *section 17(2) of the Energy (Miscellaneous Provisions) Act 2006*, with effect from the coming into operation of this paragraph, any person.”.

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

- (i) such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different provisions or different purposes and in particular the Minister may in any such order under this section specify or delimit a geographical area as respects which the order is to apply, or

(ii) to the extent that subparagraph (vi) has not previously been commenced, the 1st day of July 2007,

whichever is the earlier.

(b) Before making an order under *paragraph (a)(i)* the Minister shall consult the Commission which shall indicate to the Minister whether, in its opinion, the making of such an order would be in the best interests of the natural gas market and natural gas consumers in the State generally or any part of the State.

Amendment of
section 10B of Act
of 1976.

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

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

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

- (i) the holder of a natural gas licence under section 16 of the Gas (Interim) (Regulation) Act 2002, for the purpose of carrying out any activity for which the holder is licensed,
- (ii) the holder of a petroleum lease under section 13 of the Petroleum and Other Minerals Development Act 1960, for the purpose of carrying out any activity connected with the lease,
- (iii) a person in respect of whom an order has been made under section 2(1) of the Gas (Amendment) Act 1987, for the purpose of carrying out the functions conferred on the person by the order,
- (iv) a person who operates a gas-fired generating station, irrespective of its annual consumption level, for the purpose of providing energy for the generation of electricity at that station,
- (v) a customer purchasing natural gas which is not exclusively for his or her household use, and
- (vi) subject to the provisions of *section 18(2)* of the *Energy (Miscellaneous Provisions) Act 2006*, with effect from the coming into operation of this subparagraph, any person.”.

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

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

whichever is the earlier.

PART 5

AMENDMENT OF GAS (INTERIM) (REGULATION) ACT 2002

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

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

“Supplier of
last resort.

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

(b) Following public consultation and subject to paragraph (c), the Commission shall designate a licensed supplier to act as a supplier of last resort.

(c) The Commission may reconfirm, amend or revoke a designation made under this subsection as it sees fit.

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

(a) a licensed supplier with whom final customers have a supply contract ceases or fails to supply gas to those final customers in accordance with its contractual obligations, or

(b) following representations to the Commission from a licensed supplier, the Commission is of the opinion that circumstances exist which warrant a direction to that supplier of last resort to supply gas to a final customer.

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

(4) The Commission shall specify in a designation—

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

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

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

Shipper of last resort.

- 21B.—(1) (a) The Commission may invite expressions of interest from licensed shippers to act as a shipper of last resort, that is, to ship gas in accordance with this section.
- (b) Following public consultation and subject to paragraph (c), the Commission may designate a licensed shipper to act as a shipper of last resort.
 - (c) Notwithstanding the generality of paragraphs (a) and (b), where the Commission is of the opinion that Bord Gáis Éireann is an appropriate person to carry out the functions of a shipper of last resort under this section, it may, in accordance with paragraph (b), designate Bord Gáis Éireann to act as a shipper of last resort.
 - (d) The Commission may reconfirm, amend or revoke a designation made under paragraph (b) as it sees fit.

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

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

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

(4) The Commission shall specify in a designation—

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

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

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

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

[No. 40.] *Energy (Miscellaneous Provisions) Act* [2006.]
2006.

PART 6

AMENDMENT OF TURF DEVELOPMENT ACT 1998

Increase in
borrowing power of
Bord na Móna.

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

PART 7

AMENDMENT OF ACT OF 2001

Amendment of Act
of 2001.

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

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

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

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

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

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

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

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

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

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

(3) The Minister for Communications, Marine and Natural Resources shall not sell, exchange, surrender or otherwise dispose of all or any of the

capital stock in the Board held by him or her without the prior consent of the Minister for Finance.”.

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

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

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

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

PART 8

EFFECT OF CERTAIN AMENDMENTS MADE TO PLANNING AND DEVELOPMENT ACT 2000

22.—(1) In this section—

“Act of 2000” means the Planning and Development Act 2000;

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

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

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

(3) No approval shall be required under—

(a) section 181B,

(b) section 182B, or

(c) section 182D,

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

(i) in the case of development referred to in section 181A, a notification in respect of the development has been published, before the commencement of this section, in accordance with regulations under section 181(1)(b) of the Act of 2000 (whether or not the development has been commenced or completed before the commencement of this section),

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2006.

(ii) in the case of development referred to in section 182A, the development has been the subject of—

(I) a grant of permission under section 34 of the Act of 2000 before the commencement of this section and that permission is in force immediately before such commencement, or

(II) an application made, before the commencement of this section, in accordance with the Act of 2000 and regulations thereunder for the grant of such a permission and that application does not stand withdrawn before the commencement of this section,

(iii) in the case of development referred to in section 182C, the development has been the subject of—

(I) a grant of consent under section 39A or 40 of the Act of 1976 before the commencement of this section and that consent is in force immediately before such commencement, or

(II) an application made, before the commencement of this section, in accordance with the Act of 1976 and regulations thereunder for the grant of such a consent and that application does not stand withdrawn before the commencement of this section.

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

(a) under section 34 or 37G of the Act of 2000, and

(b) granted after the commencement of the amendments of that Act made by the Act of 2006,

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

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

(6) The terminal mentioned in *subsections (4)* and *(5)* is a terminal comprised in a strategic gas infrastructure development (within the meaning of the Act of 2000) the pipeline comprised in which development has been the subject of a consent referred to in *subsection (3)(iii)(I)*.

PART 9

REHABILITATION OF MINES

23.—In this Part—

Interpretation
(Part 9).

“local authority” means a county council or city council within the meaning of the Local Government Act 2001;

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

- (a) any place to which subsection (3) of that section relates, and
- (b) any place used for the deposit of spoil or other refuse taken from the mine or quarry,

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

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

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

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

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

Mine rehabilitation
plan.

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

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

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

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

- (a) by a local authority acting as agent of the Minister under *section 26(1)*,
- (b) by the local authority concerned with the consent of the Minister,

(c) in any other case, by the Minister.

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

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

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

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

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

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

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

Advances by
Minister for mine
rehabilitation plans,
etc.

25.—(1) For the purposes of—

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

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

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

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

Mine rehabilitation plan and appointment of local authority as agent of Minister.

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

on such terms and conditions as the Minister may decide.

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

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

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

Power of entry.

- (a) at all reasonable times a right of entry and a right of way to the site of the former mine, subject to—
 - (i) except in cases of urgency, advance notice to the owner or occupier (in so far as such owner or occupier can reasonably be ascertained), and
 - (ii) if requested, the payment of compensation of an amount for any loss or expenditure incurred by the owner or occupier of any land affected by the exercise of the right of entry and the right of way by the Minister or the local authority concerned, but only to the extent that it is just and equitable in the circumstances after having had regard to—
 - (I) any improvement in the land to the benefit of the owner or occupier as a consequence of the mine rehabilitation plan,
 - (II) any obligation that the owner or occupier of the land concerned has in respect of the site of the former mine,

and

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

(2) Where—

- (a) before the passing of this Act a project, similar in nature to a mine rehabilitation plan, was commenced in respect

of the site of a former mine by a local authority, whether acting as agent for the Minister or otherwise, and

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

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

- (3) (a) The functions of the Minister or a local authority under this section may be exercised by one or more persons on behalf of the Minister or the local authority.

- (b) The owner or occupier of land to which *subsection (1)* relates may request evidence of identity in respect of a person exercising functions pursuant to *paragraph (a)*.

- (c) For the purposes of *paragraph (b)*, evidence of identity may be proved in one of the following ways:

- (i) if the person is an officer or employee of the Minister or the local authority, an identity card or such other document issued by or on behalf of the Minister or the local authority which identifies that person as an officer or employee (however expressed) of the Minister or the local authority, as the case may be;

- (ii) in any other case—

- (I) where a notice to which *subsection (1)(a)(i)* relates is given in writing and identifies the person given the power of entry, sufficient evidence to identify that person or that the person to whom the evidence relates is an officer or employee (however expressed), or is acting as an agent, of the person given the power of entry, or

- (II) evidence in writing from or on behalf of the Minister or from the local authority that the person has been given the power of entry, together with sufficient evidence to identify that person or that the person to whom the evidence relates is an officer or employee (however expressed), or is acting as an agent, of the person given the power of entry.

Power of Minister to acquire lands, etc.

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

- (a) purchase by agreement such lands, or rights in, under or over such lands or any substratum of such lands, as the Minister considers necessary or expedient for the purposes of that plan;

- (b) by order acquire compulsorily lands, or rights in, under or over lands or any substratum of lands, that are specified in an order made under *subsection (2)*.

- (2) (a) If for the purposes of any mine rehabilitation plan the Minister thinks it necessary or expedient to acquire compulsorily any land, or rights in, under or over land or any substratum of land, then the Minister may, with the consent of the Minister for Finance, by order declare his or her intention to so acquire such land or rights. Every such order shall operate to confer on the Minister power to acquire compulsorily in accordance with this section the land or rights concerned.
- (b) Before making an order under this subsection, the Minister shall—
- (i) deposit and keep open for inspection at some suitable place (public notice of which shall be given) such plans, specifications and other documents as will show fully and clearly the land or rights intended to be acquired by virtue of the order,
 - (ii) give notice, in such manner as he or she may consider best adapted for informing persons likely to be affected by the order, of his or her intention to consider the making of the order and of the manner in which representations and objections in respect of the order may be made, and
 - (iii) if he or she considers it expedient so to do, cause a public inquiry to be held in regard to the making of the order.
- (3) (a) Where, immediately before an order is made by the Minister under this section, any person has any estate, right, easement, title or other interest in, over or in respect of the land acquired by the order, the person may apply to the Minister at any time after the making of the order for compensation in respect of that interest and the Minister shall, subject to *subsection (4)*, thereupon pay to the person by way of compensation an amount equal to the value (if any), on the date of the order, of that interest together with interest at such rate as the Minister, with the consent of the Minister for Finance, may determine from time to time, on the amount from that date to the date of payment thereof.
- (b) The compensation to be paid under this paragraph in respect of any estate, right, easement, title or interest of any kind in, over or in respect of land shall, in default of agreement, be determined by arbitration under and in accordance with the Acquisition of Land (Assessment of Compensation) Act 1919.
- (4) (a) The Minister may by regulations, in such cases (if any) and to such extent as he or she considers necessary for the purposes of compulsory acquisition under this section, apply all or any of the provisions of sections 69 to 83 of the Lands Clauses Consolidation Act 1845 as if—
- (i) such compensation were purchase money or compensation under that Act, and
 - (ii) the Minister was the promoter of the undertaking,

together with any other necessary modifications.

- (b) Where money is paid into court under section 69 of the Lands Clauses Consolidation Act 1845, as applied by the Minister under this subsection, no costs shall be payable by the Minister to any person in respect of any proceedings for the investment, payment of income or payment of capital of such money.

(5) The following applies to any public inquiry held under this section:

- (a) the Minister shall appoint a fit and proper person to hold the inquiry;
- (b) such person is hereby authorised to administer oaths to persons appearing as witnesses at the inquiry; and
- (c) any person with an interest in or affected by the subject matter of the inquiry shall be entitled to appear personally or by counsel or solicitor and to adduce evidence.

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

Recovery of expenditure on mine rehabilitation plan.

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

Scope of Part 9.

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

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

Section 6.

SCHEDULE

“SCHEDULE 3

COMBINED HEAT AND POWER

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

- (a) in the case of combined cycle gas turbine with heat recovery or in the case of steam condensing extraction turbine with an annual overall efficiency of 80 per cent or greater, the total annual electricity production of the unit measured at the outlet of the

main generators shall be considered to be electricity produced from combined heat and power;

(b) in the case of any other technology or technologies which satisfy the definition of combined heat and power and which have an annual overall efficiency of 75 per cent or greater, the total annual electricity production of the unit measured at the outlet of the main generators shall be considered to be electricity produced from combined heat and power; and

(c) in the case of combined heat and power units with an annual overall efficiency below the values referred to in subparagraphs (a) and (b), the electricity produced from combined heat and power is calculated as follows:

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

where:

E_{CHP} is electricity production from combined heat and power.

C is the actual power to heat ratio of the unit.

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

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

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

$$\text{PES} = \left[1 - \frac{1}{\frac{\text{CHP } \eta_{\text{H}}}{\text{Ref } \eta_{\text{H}}} + \frac{\text{CHP } \eta_{\text{E}}}{\text{Ref } \eta_{\text{E}}}} \right] \times 100\%$$

Where:

PES is primary energy savings.

CHP η H is the heat efficiency of the combined heat and power, defined as annual useful heat output divided by the fuel input used to produce the sum of useful heat output and electricity production from combined heat and power.

Ref η H is the efficiency reference value for separate heat production determined in accordance with section 7(6).

CHP η E is the electrical efficiency of the combined heat and power, defined as annual electricity production from combined heat and power divided by the fuel input used to produce the sum of useful heat output and electricity production from combined heat and power. Where a combined heat and power unit generates mechanical energy, the annual electricity from combined heat and power may be increased by the amount of electricity which is equivalent to that of mechanical energy.

Ref η E is the efficiency reference value for separate electricity production determined in accordance with section 7(6).

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

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

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

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



[Click here for Act](#)

**AN tACHT FUINNIMH (FORÁLACHA ILGHNÉITHEACHA)
2006
ENERGY (MISCELLANEOUS PROVISIONS) ACT 2006**

EXPLANATORY MEMORANDUM

Introduction

The main provisions of the Act are—

- to expand the functions of the Commission for Energy Regulation (CER) to underpin its work on an all-island energy market;
- to remove a legislative constraint to facilitate regulated electricity interconnection not owned by the Electricity Supply Board (ESB);
- to confer power on the Minister to issue policy directions to the CER;
- to provide for regulation, by the CER, of the activities of electrical contractors and gas installers with respect to safety, and for the appointment, by the CER, of designated bodies to facilitate this;
- to make provision in relation to gas safety in the context of the new multi-operator environment;
- to provide for the issue of capital stock in Bord Gáis Éireann by means of a technical amendment to the Gas Act 1976;
- to facilitate full gas market opening, and, consequential to this, to provide for the designation of a supplier and shipper of last resort by the CER to supply natural gas to final customers in certain specified circumstances;
- to increase the borrowing power of Bord na Móna by means of a minor technical amendment to the Turf Development Act 1998;
- to provide a casting vote to the Chairperson of the CER, and to provide for the appointment of an acting Chairperson and to introduce more flexibility in relation to the tenure and terms of office of the Chairperson;

- to address a technical anomaly by allocating an ESB shareholding to the Minister for Communications, Marine and Natural Resources from the Minister for Finance;
- to facilitate, by means of a technical amendment to the Electricity Regulation Act 1999, the provision by CER of a more flexible licensing regime for green/CHP electricity suppliers;
- to amend the definition of combined heat and power (CHP) as required by EU Directive 2004/8/EC;
- to make provision as respects the effect of certain amendments of the Planning and Development (Strategic Infrastructure) Act 2006; and
- to provide for the treatment of lands affected by mines and former mines by the rehabilitation of such lands and for the compulsory acquisition of lands for the purposes of such rehabilitation; and
- to address other minor technical anomalies in the various Acts previously referred to.

Provisions of Act

PART 1 — PRELIMINARY AND GENERAL (SECTIONS 1 AND 2)

Section 1 is a standard section, providing for the short title of the Act, and commencement on enactment or by means of Ministerial Order (as appropriate) of its various provisions.

Section 2 is a standard section, providing for the definition of certain Acts for ease of reference, and definition of the term “Minister” as it is used in *section 1*.

PART 2 — AMENDMENTS TO ACT OF 1999 (SECTIONS 3 TO 10)

Section 3 amends the Electricity Regulation Act 1999 (hereafter the Act of 1999) by inserting a new section 9B. It provides that it shall be a function of the CER to participate in the development of a market in energy (electricity and natural gas) for the island of Ireland resulting from the integration of the equivalent markets in Ireland with those of Northern Ireland. The powers of the CER include a power to arrange for the establishment of an entity, to be known as a single market operator, to operate a system of contracts and arrangements for trading in electricity on the island of Ireland.

Section 4 amends the Act of 1999 by inserting new sections 9C to 9E to provide that it shall be a function of the CER to regulate the activities of electrical contractors with regard to safety. The CER may appoint one or more Electrical Safety Supervisory Bodies to operate in accordance with detailed criteria (the requirements of which are outlined in the Act) and procedures published by the CER. CER approval is needed for any fees and charges imposed by any such body, and provision is made that any such body shall be self-financing. A person who is a member of such a body is referred to as a registered electrical contractor. A comprehensive appeals mechanism is provided for, in respect of appeals against any decision by a designated body to suspend or revoke the membership of a registered electrical contractor, with the CER as final arbiter. The

CER may, following consultation with any persons it considers appropriate, determine that a class or classes of electrical works be specified works which are subject to a completion certificate whether carried out by a registered electrical contractor or otherwise (and any such works not carried out by a registered electrical contractor must undergo an inspection arranged by a designated body prior to receipt of a completion certificate). The CER may, with the consent of the Minister for Communications, Marine and Natural Resources, by regulations designate a class or classes of electrical works to be designated electrical works. The CER may appoint authorised officers for the purposes of carrying out work inspections. The section also creates an offence for non-compliance with specified provisions.

Section 5 amends section 14(1) of the Act of 1999 by amending paragraphs (c) and (d) of that subsection to provide greater flexibility to the CER with regard to the licensing of electricity from green and CHP sources.

Section 6 amends sections 2 and 7 of the Act of 1999 to replace the definition of combined heat and power (CHP) by the insertion of a new definition of CHP as set out in Directive 2004/8/EC of the European Parliament and of the Council of 11 February 2004 on the promotion of cogeneration based on a useful heat demand in the internal energy market and amending Directive 92/42/EEC. It provides for the methodology on which various forms of CHP will be calculated and for the insertion of harmonised EU “efficiency reference values” on which these calculations will be based. It also provides for the appointment of a body to calculate and certify power-to-heat ratios of specific CHP units. A new Schedule 3 to the Act of 1999, consequential to *section 6*, is also provided for.

Section 7 amends the Act of 1999 by inserting a new section 10A which provides that the Minister for Communications, Marine and Natural Resources may give general policy directions to the CER to be followed by the CER in the exercise of its functions. Before giving such a direction the Minister shall publish a draft of the proposed direction and give reasons for it. Interested parties would have at least 30 days within which to make representations for the Minister’s consideration prior to the direction being given with or without amendment, and a notice of any such direction must be published in the *Iris Oifigiúil*.

Section 8 amends the Act of 1999 by the insertion of three new sections and by the making of a number of other insertions and substitutions for the purpose of providing for an electricity interconnector owned by a person other than the ESB to be subject to authorisation and licence granted by the CER. The new section 2A provides that such an interconnector shall not be part of the transmission system other than for the purposes of charges for use of the transmission system. The new section 16A provides that the CER may, with the consent of the Minister, secure the construction of an interconnector by specified means, including by competitive tender, by authorisation granted without a prior competitive tender, or directly by requesting the transmission system operator as part of its development plan. The new section 34A provides that an interconnector operator shall offer access to the interconnector on the basis of published non-discriminatory terms under the oversight and approval of the CER. It also provides a dispute appeals mechanism.

Section 9 amends the Act of 1999 by the insertion of a new section 40A. It provides for the taking of emergency measures in the event of a sudden crisis in the energy market threatening physical safety

or security of persons, energy infrastructure or the integrity of the transmission and distribution system for natural gas or electricity. It further provides that the Minister for Communications, Marine and Natural Resources may by Order direct the CER and electricity and natural gas undertakings to take such safeguard measures as the Minister considers necessary. In making such an Order, the Minister is obliged to have regard to avoidance of market disturbance and to only apply measures that are strictly necessary. A standard revocation/amendment provision relating to such an Order is included.

Section 10 amends the Schedule to the Act of 1999 by the insertion of new paragraphs and by making a number of substitutions. The new paragraph 2A provides for an acting chairperson of the CER to be appointed by the Minister where the chairperson is unavailable to perform his or her duties. The new paragraph 2B provides that decisions of the CER shall be determined by a majority of the votes of the members of the CER present and voting and provides for the chairperson to have a casting vote. This Section also provides greater flexibility in relation to the tenure and terms of office of the Chairperson. The position regarding the timing of the presentation by the CER of its annual report to the Minister and its proposed work programme for the following year is specified.

PART 3 — NATURAL GAS SAFETY (SECTIONS 11 TO 14)

Section 11 amends section 2 of the Act of 1999 by providing a definition of the term “natural gas fitting”.

Section 12 amends section 9(1) of the Act of 1999 by inserting 3 new paragraphs to expand the functions of the CER to include regulating and promoting natural gas safety and consulting with the National Standards Authority of Ireland regarding gas safety standards. It also amends section 9 of the Act of 1999 by inserting 2 new subsections to set out in detail how the CER is to carry out these functions by establishing and implementing a natural gas safety framework and by directing natural gas undertakings to advise their customers and the public as to natural gas safety.

Section 13 amends the Act of 1999 by inserting new sections 9F to 9J. These sections provide for regulation of the activities of gas installers in relation to safety in a similar manner to the regulation of electrical contractors provided for in *section 4*. The CER may appoint a single designated body (which may be referred to as a Gas Safety Supervisory Body) for the registration, and the monitoring of training and standards, of registered gas installers to operate in accordance with detailed criteria (the requirements of which are outlined in the Act) and procedures published by the CER. Provision is also made to ensure that responsibility for the ongoing maintenance of a natural gas fitting is allocated to the most appropriate person(s), and to remove any doubt as to the legal position of gas installers with regard to this. The section also provides for the CER to specify the form of completion certificates used on completion of gas works and to designate classes of gas works to be gas works as defined by the section. Provision is made for the natural gas Transmission System Operator and Distribution System Operator to appoint a Gas Emergency Officer with powers to enter land (with force if necessary) and to take emergency measures, where there is a danger to a person or property arising from natural gas. The CER may appoint a Gas Safety Officer for the purposes of carrying out work

inspections. The section also creates an offence for non-compliance with specified provisions.

Section 14 amends the Act of 1999 by inserting a new section 9K which allows the Minister for Communications, Marine and Natural Resources to make an Order to extend certain of the natural gas safety provisions to include liquefied petroleum gas.

PART 4 — AMENDMENT OF GAS ACT 1976 (SECTIONS 15 TO 18)

Section 15 amends section 2 of the Gas Act 1976 by updating the definitions of “foreshore”, “harbour authority” and “local authority” as they are used in that Act in order to bring them into line with the use of these terms in other legislation.

Section 16 amends the Gas Act 1976 by inserting a new section which confers on Bord Gáis Éireann (“the Board”) the power to create capital stock in amounts equal to the net assets of the Board. The provision is required to facilitate the introduction of an Employee Share Ownership Plan (ESOP) for employees of the Board in the absence of the introduction of plc legislation.

Sections 17 and 18 amend sections 10A and 10B of the Gas Act 1976 in order to provide for the full opening of the natural gas market. It expands the list of eligible customers to include “any person”. Eligible customers are those customers who are free to switch their natural gas supplier, or on whose behalf a natural gas supplier may be granted third party access to gas pipelines or facilities. This section includes a commencement provision which ensures that the market will be fully open no later than the July 1st 2007 deadline set by Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC. It also allows the Minister to make an Order to open the gas market in advance of this deadline.

PART 5 — AMENDMENT OF GAS (INTERIM) (REGULATION) ACT 2002 (SECTION 19)

Section 19 amends the Gas (Interim) (Regulation) Act 2002 by inserting new sections 21A and 21B to provide for the designation, by the CER, of a licensed supplier to act as a supplier of last resort, and a licensed shipper to act as a shipper of last resort, to supply gas to final customers of another licensed supplier or shipper (as appropriate) in certain specified circumstances. The provisions of this section are required as a consequence of full gas market opening (*sections 17 and 18*).

PART 6 — AMENDMENT OF TURF DEVELOPMENT ACT 1998 (SECTION 20)

Section 20 amends Section 22(1)(b) of the Turf Development Act 1998 and provides for an increase in Bord na Mona’s statutory borrowing limit from €127 million to €400 million. The increase in the borrowing limit will give the company greater commercial ability to develop its approved future strategic direction including waste management and electricity generation through renewable sources.

**PART 7 — AMENDMENT OF ACT OF 2001
(SECTION 21)**

Section 21 amends the Electricity (Supply) (Amendment) Act 2001 to provide for a 10% capital stock shareholding in ESB to be vested in the Minister for Communications, Marine and Natural Resources and give the Minister the same legal entitlement as other capital stock shareholders. The amended section 2 provides for the capital stock in ESB to be apportioned between the Minister for Finance (85%), the Minister for Communications, Marine and Natural Resources (10%) and the Employee Share Ownership Plan (ESOP) (5%). The amended section 3 provides the Minister for Communications, Marine and Natural Resources with all the rights and powers that the current stockholders hold, e.g. voting rights at the company's AGM. The amended section 7 provides that any dividend to be paid to the two Ministers should continue to be paid to the Exchequer and the amended section 11 ensures that any relevant expenses incurred by the Minister for Communications, Marine and Natural Resources are met by monies provided by the Oireachtas.

**PART 8 — EFFECT OF CERTAIN AMENDMENTS MADE TO
PLANNING AND DEVELOPMENT ACT 2006
(SECTION 22)**

Section 22 serves to ensure that, on commencement of the relevant provisions of the Planning and Development (Strategic Infrastructure) Act 2006, no additional consent requirements are superimposed where an application for approval has been made, or required consents given in respect of Electricity Transmission lines, strategic gas infrastructure, or State developments which require an Environmental Impact Assessment. The amendment will provide a common-sense safeguard against unnecessary delays or duplication of effort for development of these types. Additionally it provides that, where an undertaker who is in receipt of the various required consents for a strategic gas infrastructure development, subsequently decides to apply for a modification of the route of a pipeline only, the developer must apply to the Strategic Infrastructure Division for approval under section 182C of the 2006 Act to make the modifications to the pipeline. However the decision of the Strategic Infrastructure Board would relate to the proposed modifications to the route of the pipeline only. Planning permissions received in respect of the terminal would stand.

**PART 9 — REHABILITATION OF MINES
(SECTIONS 23 TO 30)**

Section 23 is a standard section, providing for the definition of certain Acts for ease of reference as they are used in *Part 9*.

Section 24 empowers the Minister or a local authority to prepare and implement a mine rehabilitation plan where such a plan is deemed necessary for the purpose of human or animal health, or for protection of the environment, or in the public interest. Provision is also made for consultation with relevant stakeholders, including the local community, regarding preparation of a mine rehabilitation plan.

Section 25 empowers the Minister, with the consent of the Minister for Finance, to advance monies to persons, including a local authority, for mine rehabilitation projects. Projects commenced before the passing of this legislation will be deemed to come within the scope of this section.

Section 26 empowers the Minister to appoint a local authority as his agent to carry out and implement a mine rehabilitation plan.

Section 27 gives the Minister, or his agent, power of entry to relevant lands where such entry is required for preparing, revising and implementing a mine rehabilitation plan. There is provision for payment of compensation to owners of lands affected by this section.

Section 28 gives the Minister power to acquire, by agreement or compulsorily, lands considered necessary or expedient for the purpose of carrying out a mine rehabilitation plan. The consent of the Minister for Finance will also be necessary. Where compulsory acquisition is proposed, the usual public consultation procedures will be required.

Section 29 provides for recovery of expenditure incurred by the Minister or a local authority on mine rehabilitation works from a person who is obliged to carry out those works. This provision is a discretionary one; there is no strict legal obligation to seek recovery of State expenditure.

Section 30 outlines the scope of the proposed legislative provisions of Part 9.

Exchequer and Financial Implications

The Act provides for the expansion of the functions of the CER in relation to the development of an all-island energy market. Pending the enactment of the Act the costs of the CER associated with this work are being met from the Vote of the Department of Communications, Marine and Natural Resources. A total sum of €4 million was paid to the CER for this purpose during 2005 and 2006. Following enactment of the Act, these moneys will be refunded to the Exchequer by the CER.

The costs to the CER arising from its new safety functions will form part of its overall costs which are funded by way of a levy on natural gas and electricity undertakings. The costs of the new Electrical and Gas Safety Supervisory Bodies are to be recovered through fees. The CER has responsibility for approving such fees and, in the case of inspection fees, must ensure that these are reasonable and cost-reflective.

Developing the all-island market and overseeing new safety responsibilities will also necessitate additional staffing resources for the CER funded by the industry levy. Appointment of staffing resources for the CER requires the statutory Ministerial consent as to numbers and terms and conditions of employment.

The creation of capital stock by the Board of Bord Gáis Éireann to allow for the implementation of an Employee Share Ownership Plan (ESOP) in the company, will by definition, result in increased shareholder value for the State and reduced costs and verifiable enhanced efficiencies for the company.

There are no negative implications for the Exchequer in allowing an increase in Bórd na Móna's statutory borrowing limit. Shareholder interests will be protected at all times as any proposal from the Company will be subject to the prior approval of the Minister and the Minister for Finance before any commitment to capital expenditure is made.

The provisions for the rehabilitation of mines are required basically to give effect to a Government decision of 28 June 2005 (Ref S 180/20/10/0354), which agreed that the State would assume responsibility for rehabilitation of former mine sites at Silvermines, Co. Tipperary at an estimated cost of €10.6 million over a 4 year period. North Tipperary Co. Council has agreed to carry out the rehabilitation programme on behalf of the Minister, but funding and overall responsibility for the project remains with the Minister.

The estimated breakdown of the expenditure, to be provided in the Department of Communications, Marine and Natural Resources' vote, is as follows:

2006	€0.5 million
2007	€4 million
2008	€3.5 million
2009	€2.6 million

It is unlikely that the full provision for 2006 will be spent.

Legal proceedings for recovery of rehabilitation costs attributable to a former mining lessee, Mogul of Ireland Ltd., are in train.

There are no staffing implications.

*An Roinn Cumarsáide, Mara agus Acmhainní Nádurtha,
Nollaig, 2006.*