

GAS (NORTHERN IRELAND) ORDER 1996

**APPLICATIONS BY GAS LICENCE HOLDERS FOR THE GRANT OF
NECESSARY WAYLEAVES FOR THE INSTALLATION OF GAS
PIPELINES**

**GUIDANCE FOR APPLICANTS AND LANDOWNERS AND/OR
OCCUPIERS**

DEPARTMENT OF ENTERPRISE, TRADE AND INVESTMENT

February 2005

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1. INTRODUCTION

- 1.1 The overriding objective of energy policy in Northern Ireland is to ensure secure, diverse, clean, efficient and sustainable supplies of energy at competitive prices.
- 1.2 The extension of the natural gas network is a key element in the achievement of this objective. The availability of a natural gas supply adds to the range of available fuels, increases consumer choice and hence brings a downward pressure to bear on energy prices for both domestic and industrial/commercial consumers.
- 1.3 Any extension of the natural gas network requires the installation of gas apparatus in land in private ownership. Gas companies therefore require permission from the owner and/or occupier of the land to install the apparatus, together with future access to the land.
- 1.4 This permission normally takes the form of either a voluntary wayleave agreement between the gas company and the owner and/or occupier or a necessary (compulsory) wayleave which can be granted by the Department of Enterprise, Trade and Investment (“the Department”) as provided for in the **Gas (Northern Ireland) Order 1996 (“the 1996 Order”)**.
- 1.5 This note is intended to provide general guidance to:-
 - (i) Gas companies (holders of a gas licence under the 1996 Order) who propose to apply to the Department for a necessary wayleave to install, and keep installed, any gas apparatus; and

(ii) Landowners and/or occupiers whose land is, or may be, the subject of such applications.

1.6 The legislative authority for the grant by the Department of necessary wayleaves for the installation of gas apparatus is presently contained in **Article 13 of, and paragraph 10 of Schedule 3 to, the 1996 Order.**

1.7 Gas apparatus is defined at **paragraph 1 of Schedule 3 to the 1996 Order** as:-

(a) pipes and other conduits for the conveyance of gas; and

(b) pressure governors, ventilators and other apparatus used for, or in connection with, the conveyance or supply of gas.

1.8 For convenience, the term “gas pipeline” is substituted for the term “gas apparatus” throughout this guidance note.

1.9 It should be noted that a number of the procedures outlined in the note are not provided for in the legislation. However, the Department considers that it is important for these procedures to be followed by gas companies and landowners/occupiers in order to assist it in reaching fully informed, objective, transparent and equitable decisions.

1.10 This guidance may be refined in the light of experience in the processing of applications for necessary wayleaves,

with a view to improving the effectiveness of the procedures.

- 1.11 If you require any further information, or have any questions, on necessary wayleaves, please contact the Department of Enterprise, Trade and Investment, Netherleigh, Massey Avenue, Belfast, BT4 2JP (e-mail: rod.robson@detini.gov.uk, telephone: 02890 529233, fax: 02890 529549).

2. **REQUIREMENT FOR NECESSARY WAYLEAVES**

- 2.1 Gas companies require permission to install, and keep installed, their gas pipelines in private land and to have access to that land for the purpose of inspecting, maintaining, adjusting, repairing or altering the pipelines.
- 2.2 In most cases, the rights to install, and keep installed, a gas pipeline, together with access to the land, are secured by the gas companies from landowners/occupiers, voluntarily. Gas companies can do this by way of a contractual agreement with the owner and/or the occupier of the land – this is called a wayleave.
- 2.3 However, if a voluntary agreement cannot be reached between the parties, a gas company may apply to the Department for a necessary (or compulsory) wayleave under **paragraph 10 of Schedule 3 to the 1996 Order** to enable the installation etc of the gas pipeline.
- 2.4 The statutory provisions provide a safeguard for a landowner/occupier in that a gas company cannot install a pipeline in a person's land unless it is with that person's permission or with the Department's consent as evidenced by the grant of a necessary wayleave.
- 2.5 Any difference or dispute as to the amount of compensation payable by a gas company to a landowner/occupier for a wayleave shall not be a ground for refusal of the grant of a necessary wayleave to a gas company. If a necessary wayleave is granted, any compensation dispute may be referred to the Lands Tribunal. (See Section 6.)

- 2.6 **Paragraph 10(5) of Schedule 3 to the 1996 Order** precludes the grant of a necessary wayleave where a dwelling covers the land or where valid planning permission exists for a dwelling to be constructed.
- 2.7 It is important to note that the statutory provisions entitle the **occupier** of the land and, where the occupier is not also the owner of the land the **owner**, an opportunity of being heard by a person (known as a wayleave officer) appointed by the Department (**see paragraph 10(7) of Schedule 3 to the 1996 Order**) to provide an **independent view** to the Department on whether a necessary wayleave should be granted.
- 2.8 The 1996 Order does not provide definitions of “owner” and “occupier”. As a general rule, the Department takes the view that, in accordance with general legal principles, the “owner” for purposes of Schedule 3 means a person who is entitled to be registered as the outright owner of the land or otherwise the person(s) who own(s) all of the legal estate in the land. The Department would not generally construe “owner” to mean a party who only has a beneficial interest in the land in question.
- 2.9 The Department also takes the view that the “occupier” is a party who has lawful possession (including temporary possession) of the land in question, or is exercising a legal right to use the land, for example, under the terms of a lease.
- 2.10 These can be difficult issues and the Department may require the parties to provide further information on the

ownership or occupation of the land to help it reach a view, for example, in cases where this is disputed.

- 2.11 Landowners/occupiers will usually opt to be heard at an (informal) **oral hearing** arranged by the Department and conducted by an independent wayleave officer. The gas company will also be invited to be represented and express its views.
- 2.12 The hearing may be held at a local venue and be followed by a visit to the site, at a suitable date and time to be arranged. The services of a stenographer will be engaged, if required. The costs associated with the hire of a room and stenographer (if required), will be met by the gas company.
- 2.13 If the landowner/occupier wishes, he may opt to make his representations on the application **in writing only** ie rather than present them personally to a wayleave officer at an oral hearing.
- 2.14 The independent wayleave officer, appointed by the Department, will consider the representations by both the gas company and the owner/occupier, and will produce a report for the Department. This will include an analysis of the representations by each party and a reasoned recommendation as to whether the Department should grant a necessary wayleave to allow the installation of the gas pipeline.
- 2.15 The Department will then decide, on the basis of the wayleave officer's report and recommendation – and any

other information it may consider relevant - whether a necessary wayleave should be granted.

2.16 The procedures for the processing of applications by gas companies to the Department for the grant of necessary wayleaves are described in more detail in the following sections.

3. **GIVING NOTICE AND MAKING A NECESSARY WAYLEAVE APPLICATION**

- 3.1 Where a gas company is unable to agree a voluntary wayleave for the installation of a gas pipeline under land, and wishes to apply to the Department for the grant of a necessary wayleave, it should first give the landowner or occupier a minimum period of 21 days written notice that it requires the grant of a necessary wayleave (**see paragraph 10(1)(b) of Schedule 3 to the 1996 Order**).
- 3.2 If, after the specified period, the owner or occupier has failed to give the necessary wayleave or has given the wayleave subject to terms and conditions to which the gas company objects, the company may apply to the Department for the grant of the necessary wayleave in accordance with the provisions of **paragraph 10(3) of Schedule 3 to the 1996 Order**.
- 3.3 The written notice sets the statutory wayleave proceedings in operation. Gas companies should note that the landowner or occupier must have been given the notice; and that the period (at least 21 days) specified in it must have been completed before the application to the Department for a necessary wayleave may be made. Any applications made before the specified notice period has been completed, will be rejected by the Department.
- 3.4 The application to the Department should take the form of a letter and provide:-
- name and address of the landowner and - where the owner is not also the occupier – the occupier, along

with an explanation of the nature of his occupation of the land (if known after reasonable enquiry);

- location of the land by reference to townlands, etc;
- brief details of gas pipeline including any apparatus used for or in connection with the supply of gas located below or above ground; and
- confirmation that:-
 - . at least 21 days notice has been given to the owner/occupier in accordance with paragraph **10(1)(b) of Schedule 3 to the 1996 Order**; and
 - . the land is not, or will not be, covered by a dwelling as defined in **paragraph 10(5) of Schedule 3 to the 1996 Order**.

3.5 The application letter should be accompanied by:-

- two copies of a map/plan of 1:2500 scale clearly detailing:-
 - . where possible, the boundaries of the owner's and/or occupier's land affected; and
 - . the proposed route of the gas pipeline across the land, and the deviation corridor;

- copy of notice given under **paragraph 10(1)(b) of Schedule 3 to the 1996 Order**;
 - a detailed statement of:-
 - . the company's reasons for the proposed installation of the gas pipeline along the route in question;
 - . any technically feasible alternative routes for the gas pipeline and associated estimated costs;
 - . description of deviation corridor *; and
 - . any other relevant information;
 - two copies of any documents (including maps, photographs and plans) the company intends to refer to at a hearing; and
 - where it is impracticable to provide copies of any documents a statement of the times and place at which a wayleave officer appointed by the Department and the owner/occupier and/or his advisers may inspect the documents and, where practicable, take copies of them.
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- (note) *The term "deviation corridor" refers to the area of land extending 50 Metres on either side of the application route and corresponds to the corridor covered by the planning approval for the development.

- 3.6 The above list is not exhaustive. All necessary wayleave applications are different, and it is for the applicant's judgement as to whether there is other information that might be relevant.
- 3.7 The gas company should copy its application and all attachments to the owner/occupier and explain why the application has been made. **The letter of application to the Department should confirm that this has been done.**
- 3.8 The Department will endeavour to acknowledge each application in writing, within two days of its receipt, and will copy the acknowledgement to the owner/occupier.
- 3.9 **The Department's reference number which is allocated to a necessary wayleave application should be included in all subsequent correspondence on the application.**

4. **HEARING THE REPRESENTATIONS BY THE LANDOWNER/OCCUPIER AND GAS COMPANY**

- 4.1 Following receipt of an application from a gas company for a necessary wayleave to install, and keep installed, a gas pipeline, the Department will write to the landowner/occupier offering him an opportunity to be heard (ie to state his objections to the proposed installation of the gas pipeline in his land) by an independent wayleave officer appointed by the Department, in accordance with **paragraph 10(7) of the 1996 Order**.
- 4.2 The owner/occupier will also be offered the choice of being heard at an informal oral hearing, to be conducted by the wayleave officer, at a local venue, or to present written representations to the wayleave officer only ie rather than presenting them personally to him at an oral hearing. He will be required to respond to the Department's letter within a specified period.

Procedures where the owner/occupier opts for an oral hearing

- 4.3 Owners/occupiers normally prefer to be heard at an oral hearing at which the gas company will also be invited to be represented and to present its views. In exercising this option, the owner/occupier will also be offered an opportunity to present to the wayleave officer and the gas company a written statement of his objections to the proposed installation of the gas pipeline, by a specified date (at least 10 days prior to the hearing).
- 4.4 The Department will formally appoint an independent wayleave officer to handle the application and arrange with the owner/occupier (who may be accompanied by legal or other advisers), the gas company (whose representative(s) may also be

accompanied by legal or other advisers) and the wayleave officer a date, time and place for the hearing. The Department will arrange a suitable venue for the hearing offsite. The owner/occupier and the gas company will be given at least 21 days advance notice of the hearing.

- 4.5 Following the hearing, the wayleave officer will arrange to visit the land affected by the gas pipeline, accompanied by representatives of the gas company and the owner/occupier.
- 4.6 It is possible that the parties may resume negotiations to try to reach a voluntary agreement after a date for a hearing has been set. The Department will agree to a postponement if both parties confirm, in writing, that they no longer wish to proceed with the hearing because they consider there is now a possibility of them reaching an agreement.
- 4.7 In circumstances where more than one request has been made for a hearing into necessary wayleave applications relating to the same gas pipeline, the Department may consider whether to hold concurrent hearings.

Purpose and scope of a necessary wayleave hearing

- 4.8 The purpose of a necessary wayleave hearing is to hear representations as to:-
 - (a) why it is necessary, or expedient, for the gas pipeline to be installed in the land in question; and
 - (b) what would be the effect of the gas pipeline on the use and enjoyment of the land.

- 4.9 In scope, a necessary wayleave hearing is focussed more on establishing the effect on private land interests rather than matters of a more general nature. This means that there is no right for third parties to participate.
- 4.10 Consequently, information that would be relevant at a wayleave hearing is site specific, for example, the effect of the intended installation of the gas pipeline on farming (crops and animals), on the use of machinery or on wild fauna and flora. Other relevant information is likely to include the cost of any suggestions for local diversions of the application route. (typically up to a maximum of 500 metres on either side of the proposed route).
- 4.11 Following the hearing, the wayleave officer may also seek, from any other relevant source, any further information he requires to assist him to reach firm conclusions and a reasoned recommendation as to whether a necessary wayleave should be granted by the Department.

Procedures where the owner/occupier opts only to make written representations

- 4.12 An owner/occupier may opt to make only written representations in respect of an application for a necessary wayleave for the proposed installation of the gas pipeline on his land ie rather than personally present his objections to a wayleave officer at an oral hearing.
- 4.13 In these circumstances, the Department will similarly appoint an independent wayleave officer to handle the case, and write to the owner/occupier setting a date (at least 14 days from the date of the letter) by which the wayleave officer and the gas company should receive a written statement of the

owner/occupier's objections. The Department will also write to the gas company pointing out, amongst other things, that it will have 14 days from the date for receipt by the wayleave officer and gas company of the owner/occupier's statement to submit to the wayleave officer its response to the statement.

- 4.14 If he considers it necessary, the wayleave officer will seek clarification from the owner/occupier of any aspect of his written statement or the company's response to the statement through an exchange of correspondence with him, and will copy this to the gas company for comment.
- 4.15 The wayleave officer will also meet with a representative(s) of the gas company (preferably on site) to discuss the owner/occupier's and the company's representations, and to view the intended route of the gas pipeline.
- 4.16 In addition, the wayleave officer will obtain any information he requires from any other relevant source, to assist him in reaching a balanced and reasonable recommendation as to whether a necessary wayleave should be granted by the Department.

Procedures where the owner/occupier declines an opportunity to be heard

- 4.17 On occasion, an owner/occupier may opt not to avail of his statutory right to be heard in response to an application by a gas company to the Department for a necessary wayleave for the installation, and keeping installed, of a gas pipeline in his lands.
- 4.18 The Department will, nevertheless, nominate a wayleave officer to consider the representations by the gas company, and to recommend whether a necessary wayleave should be granted.

- 4.19 The wayleave officer will arrange to meet representatives of the gas company (preferably on site) to discuss its representations and the refusal of the owner/occupier to grant a voluntary wayleave.
- 4.20 Again, the wayleave officer will obtain any further information he requires to enable him to reach a balanced and reasonable conclusion and recommendation as to whether a necessary wayleave should be granted.

5. **AFTER THE REPRESENTATIONS BY THE OWNER/OCCUPIER AND GAS COMPANY ARE HEARD**
- 5.1 After hearing the representations by the owner/occupier and the gas company on the company's application to the Department for the grant of a necessary wayleave, the wayleave officer will submit a written report to the Department.
- 5.2 This will record and analyse the respective representations and any other relevant information; and reach firm conclusions and a reasoned recommendation as to whether the Department should grant a necessary wayleave for the installation, and keeping installed, of the gas pipeline in the land in question.
- 5.3 Within the limits of the deviation corridor, the independent wayleave officer may recommend a different route to that originally requested. In reaching this recommendation, he will assess whether or not it is technically and economically viable and if, taking account of all the circumstances, it can be regarded as the optimum route.
- 5.4 The Department will then consider the report, along with any other relevant information, before reaching its decision on whether to grant a necessary wayleave. The Department's decision is legally binding on both parties.
- 5.5 By virtue of **paragraph 10(8) of Schedule 3 to the 1996 Order**, a necessary wayleave which has been granted by the Department shall bind any person who is at any time the owner or occupier of the land.
- 5.6 The aim is that the parties will be notified of the Department's decision within six weeks of their representations being heard. This will be in the form of a letter accompanied by a copy of the

wayleave officer's report and, if a necessary wayleave is being granted, the wayleave document itself.

- 5.7 The overall process from receipt of an application to notification of the Department's decision will usually take between 3-4 months. However, it is evitable that, for a variety of reasons, some cases may take longer.

6. **COMPENSATION**

- 6.1 Questions of compensation payments in respect of a necessary wayleave will not be addressed by the wayleave officer in hearing the representations by the owner/occupier and the gas company (although issues which relate to the impact on the use and enjoyment of the land and may subsequently be subject to a claim for compensation may be raised by either party).
- 6.2 The Department has no power under **Schedule 3 to the 1996 Order** to prescribe financial conditions in any wayleave it may grant or to resolve disputes on the level of compensation.
- 6.3 Financial compensation falls to be settled by agreement between the parties or, failing agreement, by the Lands Tribunal at the request of either party (**see paragraph 11 of Schedule 3 to, and Article 67 of, the 1996 Order**).

7. **COSTS**

- 7.1 There is no provision under **Schedule 3 to the 1996 Order** for reimbursement of the costs of the parties associated with the processing by the Department of an application for a necessary wayleave.
- 7.2 Both the owner/occupier and the gas company must therefore bear their own costs.
- 7.3 The gas company will be required to cover the costs for hire of a suitable venue for the hearing and the fees for the services of a stenographer, if engaged.

Department of Enterprise, Trade and Investment
Energy Division

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