

REGULATORY IMPACT ASSESSMENT

ELECTRICITY AND GAS (BILLING) (No.2) REGULATIONS (NORTHERN IRELAND) 2010

IMPLEMENTATION IN NORTHERN IRELAND OF:

- (i) **ARTICLE 13 (3)(b) OF THE ENERGY END - USE EFFICIENCY AND ENERGY SERVICES DIRECTIVE 2006/32/EC**
- (ii) **ARTICLE 13 OF REGULATION EC NO 1775/05 CONCERNING THE SETTING OF NON-DISCRIMINATORY RULES FOR ACCESS CONDITIONS TO NATURAL GAS TRANSMISSION SYSTEMS**

1. Title of proposal

1.1 The Electricity and Gas (Billing) (No.2) Regulations (Northern Ireland) 2010 which implement Article 13 3 (b) of the EC Directive 2006/32/EC on Energy End Use Efficiency and Energy Services Directive (ESD). In addition these regulations also give effect to Article 13 of Regulation EC No. 1775/2005.

Energy End-Use Efficiency and Energy Services Directive 2006/32/EC

1.2 This Regulatory Impact Assessment supports the implementation in Northern Ireland Electricity of Article 13(3) (b) of Directive 2006/32/EC which will require suppliers of electricity and gas in Northern Ireland to provide domestic consumers with historical consumption information on their bills or statements of accounts. The information required is a comparison of customer's energy or gas consumption covered by the period of the bill or statement with that for the corresponding period in the previous year. The objective of the Directive is to increase energy efficiency and improve security of supply by creating a framework for the promotion and development of primary energy savings in the internal energy market, taking into account the specific national circumstances especially concerning climatic and economic conditions.

Regulation EC No 1775/05

1.3 The Regulation also supports the implementation of Article 13 of the Regulation EC No 1775/05 which aims to set non-discriminatory rules for access conditions to natural gas transmission systems taking into account the specificities of national and regional markets with a view to ensuring the proper functioning of the internal gas market. In particular Article 13 of the Regulation requires that member states both establish provisions to penalise infringements of the Regulation and "take all necessary measures to ensure that the penalties are implemented".

2. Purpose and intended effect of measure

2.1. Objective

Energy End-use and Energy Service Directive 2006/32/EC

- 2.1.1 The objective of the Energy and Gas Billing Regulations is to provide customers with better information on energy usage to encourage energy efficiency and to reduce carbon emissions. The aim of the proposal is to give consumers improved historical consumption information on their bills or statements of accounts. The regulation is also intended to fulfil the Department's obligation under Article 13 3 (b) of the Energy Services Directive and will allow for full implementation of Directive 2006/32/EC in Northern Ireland thus avoiding infraction under EU law.
- 2.1.2 The intent of Article 13(3) (b) is to place a legal requirement upon gas and electricity suppliers to provide additional historic consumption information on their bills, statements or invoices.

Regulation EC No. 1775/05

- 2.1.3 The aim of this proposal is to ensure that legal provisions are established to allow for penalising of infringements of Regulation EC No. 1775/05 which relate to non-discriminatory rules for access conditions to natural gas transmission systems. Article 13(2) of the Regulation states that these penalties cannot be criminal in nature. The penalties are therefore civil penalties, similar to those which the Northern Ireland Authority for Utility Regulation (NIAUR) can impose under the Energy (Northern Ireland) Order 2003. The Department therefore intends to give effect to Article 13 of Regulation EC No.1775/05 by adding the Regulation to the definition of 'relevant requirements' under the financial penalty power contained within Articles 45 (1) and Article 45(11) of the "Energy (Northern Ireland) Order 2003".
- 2.1.4 The intent of Article 13 of the Regulation is for Member States to lay down rules on penalties applicable to infringements of the provisions of the Regulation and to take all measures necessary to ensure that they are implemented. The penalties provided for will be effective, proportionate and dissuasive.

2.2. Background

Energy End-Use Efficiency and Energy Services Directive 2006/32/EC

- 2.2.1 The Department believes that ensuring householders have direct access to information about their energy use within their homes will enable consumers to manage and reduce their carbon emissions. One way of helping customers

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reduce their energy consumption is to provide additional information on bills or statements. Significant consultation and a partial impact assessment in GB was undertaken and published in 2007. The Department has examined this work and has concluded that repeating this work in Northern Ireland would not yield significantly different results and therefore has drawn on significant customer focus work and preliminary cost benefit analysis in GB to inform this Regulatory Impact assessment.

2.2.2 The UK is already in receipt of a Reasoned Opinion letter in respect of 2006/32/EC. In Northern Ireland implementation of the Directive has been largely by voluntary initiatives and existing provisions; however this single piece of legislation in respect of electricity and gas billing arrangements is required for complete transposition. Current billing does not include any historical information. Article 13 of Directive 2006/32/EC is only applicable to electricity, natural gas, district heating and/or cooling and domestic hot water. In Northern Ireland current metering is limited to electricity and natural gas.

Regulation EC No. 1775/05

2.2.3 Article 45 of the Energy (NI) Order 2003 (“the Order”) as it was originally enacted, provided for NIAUR to impose a penalty where it was satisfied that a licence holder had contravened or is contravening any “relevant condition or requirement”. A “relevant condition” was a condition of the licence of the licence holder. A relevant requirement, in relation to a gas licence holder, was a duty or other requirement imposed on him by or under an Order made under Article 27(4) (b) of the Order which related to the provision of information.

2.2.4 Therefore, it has been agreed between the Department and NIAUR that the Regulation be implemented into domestic legislation as this is a requirement of EU law.

2.3 Risk Assessment

2.3.1 The regulation is addressing the risk of infraction of an EU Directive. The UK is already in receipt of a Reasoned Opinion letter and the implementation of these Regulations in Northern Ireland is one of only a few remaining outstanding issues to ensure compliance with the Directive. The risk of not implementing the regulations could result in proportionate fines from the EU Commission.

3. Options

3.1 Energy End-use and Energy Service Directive 2006/32/EC

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Option 1 – do nothing.

3.1.1 The Energy End Use Efficiency and Energy Services Directive committed the Department to improving the information customers receive on their energy use. Doing nothing would risk losing potential cost effective energy and carbon saving opportunities and could risk infraction for failure to implement the Directive. If Northern Ireland does not properly implement the Directive then the United Kingdom is left open to infraction proceedings. This option is not carried forward.

Option 2 – Increase Billing / Meter Reading Frequency

3.1.2 Options to mandate quarterly or monthly billing were considered. However, no evidence base was available to indicate that this measure alone would reduce consumption. These options would potentially improve bill quality but the additional cost of meter reading and bill production would incur significantly greater costs than the chosen policy option with additional CO₂ benefits. This option is not varied forward.

Option 3 – Implement the Directive in a prescriptive fashion or allow energy suppliers flexibility

3.1.3 These options were considered in terms of the best way to implement the selected Regulations. It is felt that implementing in a prescriptive manner may lead to sub optimal delivery as energy suppliers all have different bill styles and understand their own customers needs better than the Department. As such a flexible approach to implementation will allow energy suppliers to implement the policy in the most cost effective way for them while selecting the format they fell will maximise the impact on customers. Allowing energy suppliers flexibility to implementing the Directive is the chosen option.

3.2 Regulation EC No. 1775/05

Option 1 – do nothing.

3.2.1 Under EC law, Member States are obliged to implement Regulations of the European Council and European Parliament. If Northern Ireland does not properly implement the Regulation then the United Kingdom is left open to infraction proceedings, the result of which would be a proportionate financial fine. This option is not carried forward.

Option 2 – Implement Regulation.

3.2.2 The second option is to support and adopt Article 13 of Regulation EC No.1775/05 in its current form. This would mean that Northern Ireland would be in line with EU Regulations and would establish provisions to penalise infringements of the Regulation. This would allow NIAUR to take all necessary measures to ensure that the penalties are implemented. This is the chosen option.

4. Benefits

4.1 Energy End-use and Energy Service Directive 2006/32/EC

Option 3 – Implement the Directive by allowing suppliers flexibility

4.1.1 This measure aims to improve domestic gas and electricity bills through the provision of historical information on use in an easily understood format. The premise is that such information would help households have a greater awareness of their energy consumption and enable more efficient use of energy. There is however a number of key assumptions that must be taken into account in estimating the benefits from the chosen option (Option 3 outlined at paragraph 3.1.3 to allow suppliers flexibility to implement the Directive).

4.1.2 It is important to note that assumptions on the reduction in energy saved are based on a literature review of metering, billing and direct display projects (Darby 2006¹). The literature review highlighted potential energy reduction savings of between 0 and 10 percent in the United States and a range of Scandinavian countries. Although there were many studies included in this review, none is directly applicable to the introduction of better billing in the UK context. The studies often combine a number of other energy efficiency measures implemented at the same time as providing improved billing information and there are difficulties in singling out the specific impacts of these measures. Differences in climates, problems of small trial sizes and self-selecting response groups add to the uncertainty. The assumptions adopted therefore are relatively cautious, based closely on a GB analysis and are outlined below.

- The provision of historical information is assumed to incur a one-off cost of £0.17 per bill per customer. This largely relates to the system and additional information requirements associated with provision of historical information, as well as production/paper costs. Sensitivities around this value have been tested (£0.10, £0.25). This is annuitised over a five year period, assuming a cost of capital of 10 per cent, corresponding to an annual cost of £0.04 per meter per year. No additional costs associated with customer services have been assumed, as it is assumed this will be derived through existing energy efficiency channels.
- There is uncertainty over the potential change in customer behaviour resulting from this measure, and how long any change might persist. Therefore relatively small changes in energy saved have been assumed – 0.25 per cent with sensitivities of 0.1 per cent and 0.5 per cent around this. These reductions are assumed to persist over 15 years with a low and high sensitivity of 10 and 20 years respectively.
- The value of energy saved is in line with the Department of Energy and Climate Change (DECC) energy price forecasts. Other assumptions – for

¹ Sarah Darby, 2006, 'The Effectiveness of Feedback on Energy Consumption' Defra

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example the social cost of carbon (£87 in 2008) increasing by £1 pa) and the discount rate, are in line with HMT Green Book guidance, and the timescale the policy is considered over is 2008-2034, in order to adequately capture the benefits from consumption reduction over time.

- The assumptions have been combined to give the biggest range of costs and benefits – so the low energy reduction assumptions are associated with the high supplier side costs and vice-versa.

4.2 Regulation EC No. 1775/05

4.2.1. The main benefit of implementing Article 13 of the Regulation would be that Northern Ireland provisions would be in line with EU Regulations and therefore would not be subject to infraction proceedings, and consequently a proportionate financial fine.

4.3 Business Sectors affected

4.3.1 These regulations will affect the electricity and gas suppliers in Northern Ireland. The Department does not believe that the Regulations will have a material impact upon competition. The requirement applies equally to all licensed electricity and gas suppliers. It is very unlikely to affect the market structure, and it will not lead to significantly higher set-up costs or present any new barriers to market entry for new or potential suppliers.

4.4 Other Impact Assessments

Legal Aid

4.4.1 The requirement will not introduce new criminal sanctions or civil penalties for those eligible for legal aid, and would not therefore, increase workload of courts or demand for legal aid.

Sustainable Development

4.4.2 The requirement is designed to reduce energy use and carbon emissions and to promote energy efficiency. It will provide customers with a tool with which to manage their energy consumption, enabling them to take greater personal responsibility for environmental impacts of their own behaviours and contribute to the need to live within environmental limits.

Carbon Assessment

4.4.3 The implementation of Directive 2006/32/EC should lead to overall energy reductions of around 1% per annum in Northern Ireland and there will be consequential and directly related CO₂ emission reductions with the energy

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savings.

Health

4.4.4 The proposal raises no apparent health issues.

Race Equality

4.4.5 After initial screening as to the potential impact of this regulation on race, disability and gender equality it has been decided that there will not be a major impact upon minority groups in terms of numbers affected or the seriousness of the likely impact, or both.

Gender Equality

4.4.6 The proposal raises no apparent gender equality issues

Human Rights

4.4.7 The proposal raises no apparent human rights issues.

Rural Proofing

4.4.8 The proposal raises no apparent rural issues.

5. Costs

5.1 Energy End-use and Energy Service Directive 2006/32/EC

Option 3- Implement the Directive – allow suppliers flexibility

Compliance costs

5.1.1. There will be no direct costs to the Department or NIAUR. However there will be one –off costs to energy suppliers for bill and system re-design. In the main these one off costs are expected to fall within the first year with an ongoing average annual cost. In GB these costs are estimated as a one-off cost of £9.4 m with average annual cost equating to £0.1m. In Northern Ireland, the use of a common service provider for electricity (NIE Plc), a relatively small number of second tier electricity suppliers and only two gas companies, mean that the total one –off cost may be lower, (estimated at £1.5m in total) with average annual costs equating to £300,000.

Other costs

5.1.2 The other key non-monetised costs by the main affected groups i.e. suppliers and consumers are that the addition of more information to domestic utility bills may

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make bills more complex and difficult to interpret. However the flexible approach to the provision of this information means that suppliers can choose an innovative approach to supplying this information, which may not necessarily be on the bill itself. The costs of the continuous benefits in emissions savings and energy use reduction is difficult to quantify, however an extrapolation of the GB analysis (using the social price of carbon) suggests that annual benefits of up to £3 million could be realised through energy and carbon savings if behavioural responses assuming a 0.25 reduction in consumption persisting for 15 years are achieved.

Costs for a typical business

5.1.3 Anecdotal evidence which has been verified by local consultation has indicated that the required changes to the billing systems are technically feasible but that significant cost could be incurred. One gas supplier has indicated that costs might be in the region of £100-£200 k to make amendments to their billing systems. There is evidence to suggest however that the overall cost of billing systems is falling and even the most modest of systems now available can provide high degrees of functionality.

5.2 Regulation EC No. 1775/05

5.2.1 There will be no direct costs to the Department, NIAUR or Northern Ireland consumers as this is solely a mechanism to allow NIAUR to take all necessary measures to ensure that the penalties of the Regulation are implemented. The only costs that may occur would be for those gas companies who are deemed by NIAUR to have infringed on the rules of the Regulation.

6. Consultation with Small Business: The Small Business Impact Test

6.1 Implementation of Article 13(3) (b) of Directive 2006/32/EC and implementation of the provisions of Article 13 of the Regulation EC No. 1775/05 affect only electricity and gas suppliers. This being the case, the Department's initial view was that the impact on small firms would not be significant. The requirement falls equally upon suppliers of electricity and gas, including small suppliers. The consultation asked specifically if small suppliers should be allowed more time to implement the requirement but no respondents argued in favour of this. No other specific issues for small suppliers were raised in response to the consultation. The Department therefore concludes that there is no particular or disproportionate impact on small businesses.

7. Enforcement and Sanctions

7.1 The requirement will come into force from the 22 June 2009. The Department wishes to introduce the measure as soon as possible to maximise the potential for reduction in carbon emission, but recognises that energy suppliers require a certain

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amount of time to make the necessary billing systems changes. The Energy Order will be amended by the Statutory Instrument. The requirement to provide historical consumption information will be enforced by the Department through the Electricity and Gas Billing Regulations (Northern Ireland) 2009.

- 7.2 Article 45 of the Energy (NI) Order 2003 (“the Order”) as it was originally enacted provided for NIAUR to impose a penalty where it was satisfied that a licence holder had contravened or is contravening any “relevant condition or requirement”. Therefore, it has been agreed between the Department and NIAUR that Article 13 of Regulation 1775/05 be implemented into domestic legislation as this is a requirement of EU law. Therefore compliance with electricity and gas licence conditions is enforced by the Utility Regulator who has the power to impose financial penalties of up to 10% of the turnover of the licensees in the event of a breach.

8. Monitoring and Review

- 8.1 The Department will liaise with the Utility Regulator who will monitor the operation of Northern Ireland electricity and gas companies to ensure that they adopt the new billing regime and adhere to the rules on penalties applicable to infringements of the provisions of the Regulation.

9. Consultation

Within Government

- 9.1 DETI consulted with the Northern Ireland Authority for Utility Regulation (NIAUR), the Consumer Council, the Department of the Environment (DOE), and the Department for Social Development (DSD), the Energy Saving Trust and the Northern Ireland Housing Executive prior to and during the consultation process.

Public Consultation

- 9.2 A consultation was carried out on the proposed Regulations under Article 13(3) (b) of the Energy End Use Efficiency and Energy Services Directive and Article 13 of Regulation EC No 1775/2005 by DETI between 7 April and 19th May 2009. The 6 week consultation period was deemed appropriate as there was considerable time pressure with this Statutory Rule as the EU Commission has now issued a Reasoned Opinion (RO) against the UK for failing to implement some aspects of the Energy Services Directive on which transposition was required by 17 May 2008. It was agreed with the EU Commission that these regulations will be made by the end of May and therefore to facilitate this we had to carry out a quick and targeted consultation exercise over a 6 week period in relation to the provision of the information in question on paper bills or statements of account.

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- 9.3 DETI received thirteen responses to this consultation. The responses largely fell into the category of agreeing to the approach on electricity and gas billing being proposed by DETI. Of the thirteen responses, two made no specific comments in relation to the proposed billing regulations. However there was broad support from the majority of the remaining respondents to the proposal, provided that flexibility was allowed in its provision, for instance, in terms of whether the information was provided graphically or not.
- 9.4 Two respondents commented that in their view the regulations were inequitable as they did not apply to the oil industry and therefore raised concerns around the competitive position of natural gas suppliers versus oil suppliers. However one of these respondents did recognise that the Department is seeking to improve the information that is provide to customers and is supportive of the Departments' approach to allow suppliers flexibility in how information is presented.
- 9.5 Small fuel suppliers are essentially exempt from the Directive. The Department maintains the view that, given the nature of the market for fuels other than natural gas and electricity, and the use of these fuels that it would not be practicable or in some cases possible, for suppliers to provide comprehensive and accurate information in relation to historical use.
- 9.6 There were no comments from any respondents in relation to the proposal to give effect to Article 13 (2) of Regulation EC No. 1775/2005 which aims to set non-discriminatory rules for access conditions to natural gas transmission systems taking into account the specificities of national and regional markets with a view to ensuring the proper functioning of the internal gas market.
- 9.7 Following consideration of the consultation responses, the Department's conclusion, based on responses to the consultation and the Impact Assessment, and bearing in mind that the requirements of the Energy End Use Efficiency and Energy Services Directive, was that it should implement the policy along the lines set out in the Consultation document.

10. Summary and Conclusions

- 10.1 Option 3, to implement Article 13 3 (b) of the Energy End Use and Energy Services Directive by allowing energy suppliers flexibility to provide historical consumption data and to implement Article 13 of Regulation 1775/05 is the chosen option. This would allow Northern Ireland to comply with EU law and a flexible approach to implementation will allow energy suppliers to implement the policy in the most cost effective way for them while selecting the format they feel will maximise the impact on customers.
- 10.2 This measure aims to improve domestic gas and electricity bills through the provision of historical information on use in an easily understood format. The

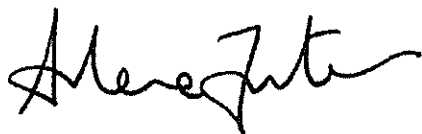
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reviewed to establish the actual cost and benefits and the achievement of the desired effects in 2012.

11. Declaration

"I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs".

Signed:



Date:

4th December 2009.

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