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**PRINCIPAL OBJECTIVES AND GENERAL DUTIES OF THE DEPARTMENT AND THE AUTHORITY IN RELATION TO ELECTRICITY, GAS AND SUSTAINABLE ENERGY SUPPLIES & REVIEW OF RELATIONSHIP BETWEEN GOVERNMENT AND NIAUR ON ENERGY MATTERS**

1. You will be aware that my branch has been reviewing general energy objectives with a view to using the new Energy Bill to bring sustainability up the priority list of NI objectives for electricity and gas. This paper discusses some issues that have arisen and seeks your feedback on the options available to the division – it might be best to have a discussion at the next HOBs to achieve an agreed option that we could take forward to the Minister.

**OBJECTIVES**

**Background**

Existing legislation in NI

2. The Energy (Northern Ireland) Order 2003 (the **Energy Order**) contains provisions which set out the principal objectives and general duties in relation to electricity and natural gas on the Department of Enterprise, Trade and Investment (the **Department**) and the Northern Ireland Authority for Utility Regulation (the **Authority**).
3. Articles 12(1) and 14(1) in the Energy Order refer to the principal objective for electricity and gas respectively. These are the sections highlighted in **yellow** in **Annex A**. Articles 12(2) and 14(2) in the Energy Order refer to what we are calling the secondary duties which help to further the principal objective for electricity and gas. These are the sections highlighted in **grey** in **Annex A**. Articles 12(3) to 12(7) and 14(3) to 14(7) in the Energy Order refer to the other general duties for electricity and gas. These are the sections highlighted in **turquoise** in **Annex A**.
4. Articles 12(5)(c) and 14(5)(c) in the Energy Order places a statutory duty on the Department and the Authority to carry out their respective electricity and gas functions in the manner which it considers is best calculated to secure a diverse, viable and environmentally sustainable long-term energy supply. Environmental sustainability is interpreted to include the need to guard against climate change.
5. **Annex B** shows the sustainability duty imposed by the Miscellaneous Provisions Act 2006 which applies to all public authorities in Northern Ireland.

Existing legislation in GB

6. Existing legislation on departmental and regulatory duties is shown at **Annex C**. Ofgem’s duties require them to consider a number of issues in furthering their primary objective to protect consumers. Changes have included the introduction of the principal objective in 2000: prior to this explicit mention of consumer interests appeared only in the secondary duties. Meanwhile, the duty to contribute to sustainable development was first introduced by the Energy Act 2004 as a secondary duty, and subsequently promoted to a primary duty in the Energy Act 2008, reflecting the Government priorities. In addition the Energy Act 2008 clarified that “consumers” include both “existing and future [electricity and gas] consumers”.
7. The Energy Act 2010 then added clarification that “Those interests of existing and future consumers are their interests taken as a whole, including their interests in the reduction of electricity-supply/ gas-supply emissions of targeted greenhouse gases; and their interests in the security of the supply of electricity/gas to them.”
8. The Sustainable Energy and Climate Change Act 2006 gave the DECC Secretary of State the duty to “take such steps as he considers appropriate to promote the use of heat produced from renewable sources”.

Existing legislation in ROI

9. According to our research, DCENR has no objectives in statute; rather, their objectives are set out in regular white papers, the next planned for later this year. CER does have “functions” set out in statute (see **Annex D**). In relation to sustainability, these are:
  - to advise the Minister on the impact of electricity generation in relation to sustainability;
  - to have regard to the need to promote the use of renewable, sustainable or alternative forms of energy;
  - to take account of the protection of the environment;
  - to encourage the efficient use and production of electricity.
10. In relation to consumer protection, the Gas Act 2002 requires the Minister and the Commission to carry out their functions and exercise the powers conferred on them under this Act in a manner which... “the Minister or the Commission, as the case may be, considers protects the interests of final customers of electricity or gas or both, as the case may be”.

**Principles**

11. Perhaps it would be useful to suggest a few principles by which any change to objectives, or new objectives, could be measured. I would like to suggest the following:
  - Long-term-ism: will the objectives help NI to meet long term targets (a) set out in the SEF and (b) in order to be meet UK statutory carbon targets, we know that energy production must be virtually de-carbonised by 2050<sup>1</sup>;
  - Sustainability: clearly connected to the above, but also in line with the Renewable Energy Directive, the Energy Efficiency Directives, etc;
  - Consumer protection: it looks as though consumer protection is sufficiently embedded in our objectives, but it might be worth considering whether we need to protect future consumers as

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<sup>1</sup> While the target is an 80% reduction in GHG emissions by 2050, it is clear that energy production must decarbonise fully to allow for e.g. agriculture which cannot, by its nature, fully decarbonise.

well as existing consumers so that existing consumers are not protected at the expense of future consumers;

- Coherence within the department: so that both the Department and the Regulator have a coherent set of objectives and duties which do not conflict.

## Discussion

### Electricity

12. In order to meet the above principles, we would suggest that the electricity objectives could be changed in a similar way to that in which the Energy Act 2008 amended GB electricity duties (see **Annex C**) so that existing and future consumers are protected and that sustainability is brought up the “ranking” of objectives so that it becomes what we are calling a secondary (in grey) duty rather than a tertiary or “other” duty. There is a risk that these changes are merely “optical” rather than producing any real change in the way in which the department and the regulator undertake their duties. Ofgem has commented that the “existing and future consumers” wording naturally brings in all the other issues of sustainability, security of supply and GHG emissions, so they see that as the key change.
13. In terms, for example, as in GB, redefining consumer interests to include “interests in the reduction of electricity-supply emissions of targeted greenhouse gases; and their interests in the security of the supply of electricity to them”, there is the risk of the perception that changes that favour greenhouse gas would be unwelcome at a time of economic downturn, although interest in security of supply may be more welcome. It is possible that we do not have the vires to include consideration of greenhouse gas emissions in duties/objectives, although we would suggest that DOE is unlikely to put any obstacles in the way of such an amendment.
14. HOBs are generally of the opinion that the “existing and future consumers” should be included in DETI/NIAUR powers, as should sustainability and security of supply. Opinion is divided as to whether GHG emissions (as above) should be included in the consultation at a time of economic austerity – on the other hand, we are bound by the Climate Change Act, the emissions performance standards look set to come in here as across the UK, and looking long-term it would seem odd to leave this out. We recommend that the consultation should suggest that electricity powers are amended to take into account:
  - existing and future consumers;
  - bring sustainability up the rank of objectives;
  - security of supply;
 and would appreciate a discussion on the issue of inclusion of GHG.

### Gas

15. As you know, NI objectives for the gas industry are very different from those in GB. For a long time, we have had a requirement to “promote the development and maintenance of an efficient, economic and co-ordinated gas industry in NI”, whereas in GB the principal objective is to “protect the interests of existing and future consumers in relation to gas...by promoting effective competition...” Moreover, in NI, consumer protection is a second tier duty, whereas in GB it is a primary duty.
16. Work on the EU IME3 package (**Annex E**) ensured that the following are now included in the Regulator’s duties for gas:

- “promoting...a competitive, secure and environmentally sustainable internal market in natural gas”;
- “helping to achieve, in the most cost-effective way...energy efficiency as well as the integration of large and small scale production of gas from renewable energy sources and distributed production in both transmission and distribution networks”;
- “facilitating access to the network for new production capacity...and of gas from renewable energy sources”.

17. We recommend that the consultation should suggest that electricity powers are amended to take into account:

- Existing and future consumers (if this is considered necessary in the light of IME3)
- Bring sustainability up the rank of objectives (if this is considered necessary in the light of IME3)
- Security of supply.

18. We would be grateful for your thoughts as to whether GHG emissions (as above for electricity) should be included in the consultation.

#### Gas and renewable heat

19. The current duty to promote the gas industry has been in effect for 15 years: the question arises whether it is still appropriate at present and for the future. With the advent of the Renewable Energy Directive came the obligation to promote renewable energy across electricity, heat, and transport in order to meet MS targets. DETI set a target of attaining 10% renewable heat by 2020, so it is keen to increase levels of renewable heat in Northern Ireland by promoting the renewable heat industry. In addition, the forthcoming NI renewable heat incentive implies that DETI is “promoting” renewable heat, in order to achieve the RED and SEF targets, through the introduction of an incentive mechanism. It was evident from the drafting of recent renewable heat consultation that there is a tension between the duty on the Department and Regulator to promote the gas industry and the inferred duty on the Department to promote renewable heat.

20. Initial feedback from RHI consultation events shows that some stakeholders are already concerned that the statutory duty to “promote” the gas industry will work against the sustainable energy agenda and come into conflict with what is needed to promote renewable heat. In addition, the gas industry is concerned that the renewable heat agenda may impact on their business. As a consequence, the RHI consultation has made it clear that the RHI will not be available in areas which have access to gas. Even though gas is the least polluting form of fossil fuel, there is a tension between the impetus of climate change and renewable energy policy and the current duty to promote the gas industry.

21. If we continue to promote the gas industry ad infinitum, would we be doing customers a disservice when, by 2050, we want them all off gas again by then. However, if we remove the duty to promote gas, then this may impact negatively on the ability of the gas industry to raise investment to deliver gas infrastructure and on the medium-term roll-out of the gas industry with associated benefits in reduced costs, emissions and cost management through PAYG metering. How can we resolve the tension between the Department’s statutory duty to promote the gas industry and the drive to increase renewable heat?

## Options

22. I suggest the following options for consideration on the gas/heat question and am happy to consider other suggestions:

- a) status quo: duty to promote gas and no other heat duties;
- b) amend gas duty only e.g. to be more in line with GB duty;
- c) status quo + 2020 signal: leave gas duties as they are but signal in consultation that we believe that the duty “to promote” should come to an end by e.g. 2016 or 2020 when it would be replaced by an obligation to e.g. promote renewable heat (this could be put in legislation via the energy bill and commenced in 2016/20);
- d) leave gas duty as it is for now (optionally with 2016 signal) and impose a separate duty on Department and Regulator to promote sustainable/renewable heat;
- e) amend current gas duty to be similar to GB gas duties (i.e. remove the promotion element and move to protection of consumer) and replace with duty to promote sustainable/renewable heat;
- f) replace duty to promote gas with a duty to promote sustainable heat including gas i.e. waste heat; renewable heat; gas and heat from CHP or district heating.

None of these options would get us in to the issue of regulating other heat fuels such as oil and gas.

23. Initial analysis of the above against principles:

	Description	Principles				
		Long-term	Sustainability	Consumer protection	Coherence	Other comments
a	Status quo	x	x	✓	x	
b	Slight amendment	?	X	✓	x	All the negatives of a negative signal on gas and none of the positive signals on RH.
c	Status quo + 2016/2020 signal	✓	?	✓	?	Shows the dept has thought about this issue.
d	Status quo + new heat powers	✓	✓	✓	?	Still philosophically incoherent – promoting both RH and gas – but could become coherent through regional approach to development.
e	Amend gas duty and replace with promotion of RH	✓	✓	✓	✓	Likely to be taken very badly by gas industry – probably not in line with Minister’s thinking.
f	Duty to promote sustainable heat including gas i.e. waste heat; renewable heat; gas and heat from CHP or district heating	✓	✓	?	?	Will still upset gas industry. Will have to be reviewed before 2020.

24. Given the current consultation on gas to the west and the likely negative effects of raising this question at the current time, HOBs tend towards the view that the “promotion of gas” duty remains appropriate at the present time. However, it would be worth discussing these issues as a division before coming to a final conclusion – we all agree that it would be important that the Department shows that it is aware that these issues need to be resolved.

## REVIEW OF NIAUR

25. Concerns have been raised with the Department that the Regulator has effectively re-written government targets through the price control mechanism.

### Background - Ofgem review

26. The UK Government instituted a Review of Ofgem and initiated this with a call for evidence in July 2010. The purpose of the review was “to review Ofgem’s regulatory role and consider whether any changes are needed to align the regulatory framework with the Government’s strategic policy goals.” The Review was carried out by DECC with a timetable as follows:
- The call for evidence – July – September;
  - Government response to the call for evidence – December;
  - A summary of conclusions was issued in May;
  - A Final report issued in July 2011.
27. The conclusion of the final report is that the Government will put in place a statutory Strategy and Policy Statement that will be established as a result of the Ofgem review. It clearly places the responsibility for defining strategic direction with Government, providing the context for Ofgem’s independent regulatory role, and giving confidence that the two will remain aligned and coherent. Further detail on the form of the Strategy and Policy Statement is attached at **Annex F**.
28. Inspired by the GB example, and by recent developments/statements coming from within the Regulator’s office, HOBs agreed it would be useful to consider whether a similar review of the roles and responsibilities of DETI and NIAUR as they touch on energy matters only. Clearly DFP is legally responsible<sup>2</sup> for NIAUR from an appointments perspective, and DRD has an interest from a water perspective, but , subject to the agreement of those departments, it should be possible for DETI to examine and consult on the roles and responsibilities of NIAUR which are embodied in the Energy Order 2003.
29. If you agree that the opportunity of the Bill might be a useful juncture at which to raise issues around clarification of the roles of DETI and NIAUR in relation to energy, then options around this appear to be:
- a) to kick off a call for evidence as soon as possible e.g. starting in October for two months in order to have some feedback from industry, consumer council etc before the consultation in order to formulate options for consultation. The drawback to this is that it might delay the consultation by a month (although other papers you will have seen show that the consultation is likely to be delayed in any case);
  - b) to include the call for evidence as part of the consultation paper. The drawback to this would be that whatever we came up with as a result of the consultation would probably then need to

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<sup>2</sup> Under Article 3 of the Water and Sewerage Services Order(NI)2006

- be consulted on (although it doesn't look as though GB is going to do that), leading to a delay *if* we wanted to include any resulting measures in the current Bill;
- c) to include specific proposals within the consultation paper following e.g. the GB concept of a statutory Strategy and Policy Statement, given that we face so many similar challenges to GB.
30. Clearly we would have to get the agreement of the Minister and then write to NIAUR to let them know of our intentions before any such action.
31. I would also be grateful if you would consider the value of a review of the energy responsibilities of NIAUR and whether it would be worth using the consultation to draw out issues around the divide of responsibilities between the Department and the Regulator.

**Next steps**

32. HOBs generally feel that a meeting with you to discuss these fundamental issues would be helpful – particularly on the interaction of gas development with renewables policy. After that, we would need to:
- a) get top management views on the favoured course of action;
  - b) draft a submission to the Minister (and perhaps air with Andrew beforehand);
  - c) write or email DFP and DRD to get their agreement to a review of NIAUR's energy functions;
  - d) write to NIAUR board/chief executive re objectives and review.



**OLIVIA MARTIN**  
**SUSTAINABLE ENERGY**