



2007
Maximum Resale Price Provisions
Utility Regulator's Initial Proposals

Executive summary

This consultation paper seeks views on the revision of policy concerning the Maximum Resale Price (MRP) of electricity and gas - that is the price that landlords can charge their tenants for these fuels after purchase from authorised suppliers.

The reason that has prompted the Utility Regulator to carry out a review of the existing policy is:

- Gas network extension
- Gas market opening came into force January 2007
- Market opening for electricity due to come into force November 2007

This paper summarises the relevant legislation and the associated policy issues raised by the operation of the MRP. It then considers the issues involved in the mechanism for setting MRP; proposals for change are set out under each area.

The Key proposal is:

- that the Utility Regulator introduces a pass-through rule. That is the resale unit prices for electricity and gas will be the same as that paid by the landlord.

Comments on the proposals are invited by 24 July 07.

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Chapter 1 – Introduction

Background

At present the Gas (Northern Ireland) Order 1996 and the Electricity (Northern Ireland) Order 1992 and also the Energy (Northern Ireland) Order 2003 require the Northern Ireland Authority for Utility Regulation (the Utility Regulator) to issue directions setting the maximum price for the resale of gas and electricity in Northern Ireland. The maximum resale price (MRP) limits the amount that can be charged for supplying gas that has already been bought from a licensed supplier, or electricity which has been bought from an authorised electricity supplier (i.e one who is authorised to supply either by licence or exemption). It applies principally to the resale of gas and electricity by landlords to tenants.

Rationale

The Utility Regulator's policy in relation to the setting of maximum resale prices has always been to mirror the prevailing NIE home energy tariff for electricity, and the prevailing Phoenix Natural Gas tariff for gas. However this policy needs to be revisited for the following reasons:

- The extension of the natural gas industry to areas outside Greater Belfast and Larne¹ by firmus energy means that, in these new areas the Phoenix Natural Gas tariff is not appropriate.
- Market opening in Electricity, which comes into force in November 2007, means that the prevailing NIE tariff may not be appropriate.
- Market opening for gas within the Phoenix licensed area, which came into force in January 2007, means that the prevailing Phoenix tariff may not be appropriate in Greater Belfast.

Structure of the document

Chapter 2 sets out the legal and policy background to this review in more detail. Chapter 3 sets out the Utility Regulator's proposal. The relevant existing provisions of Gas (Northern Ireland) Order 1996 and the Electricity (Northern Ireland) Order 1992 are set out in Appendices 1 and 2.

¹ Limavady, Coleraine, Ballymena, Ballymoney, Antrim, Derry, Newry, Banbridge, Armagh and Craigavon.

Timetable

It is hoped that the provisions relating to the MRP will be revised by July 07. The expected timetable for this consultation exercise is:

- 3 May 2007 – Utility Regulator issues consultation document.
- 24 July 2007 - Responses to consultation document due.
- August 2007 – After due consideration of responses, the Utility Regulator is in a position to set the MRP.

Responses

The Utility Regulator wishes to conduct this review in as open a way as possible and to consider the views of all interested parties. If you wish to express a view on these initial proposals or any related matter, we would like to receive your response by 24 July 2007. Responses should be addressed to:

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Respondents can mark all, or part, of their responses as confidential. However, we would prefer that as far as possible responses are provided in a form that can be placed in the Utility Regulator's library.

If you have any queries concerning the issues raised in this document, please contact Frankie Dodds on 028 9031 6631 (frankie.dodds@niaur.gov.uk)

Chapter 2 – Legal and policy background

Provisions for MRP have been included in legislation for many years. This chapter explains how the legal provisions have developed and been implemented for gas and electricity in turn. The chapter then discusses how the MRP provisions have operated in practice.

Gas

Current gas provisions derive from the Gas (Northern Ireland) Order 1996 (Article 24), which gave the then Director General of Gas a duty to set MRP. Responsibility for setting MRP under these provisions now rests with the Utility Regulator. The provisions also allow for the recovery of any charges in excess of the MRP and require the person re-selling gas to provide the purchaser with certain information. The re-sale of gas for use as fuel for propulsion in a motor vehicle is excluded from the MRP provisions.

Up to 2006, policy for MRP in gas required that the resale price of gas paralleled the price set by Phoenix Gas. The proposal is that gas should not be re-sold at a price higher than has been paid for it.

Electricity

In electricity current provisions derive from Article 47 of the Electricity (Northern Ireland) Order 1992. Responsibility for this also lies with the Utility Regulator. The purchaser can recover any charges levied in excess of the MRP under the provisions.

Up to 2006, policy for MRP in Electricity required that the resale price of Electricity paralleled the price set by NIE. The proposal is that Electricity should not be re-sold at a price higher than has been paid for it.

Operation of the MRP provisions

There is no formal role for the Utility Regulator in determining individual MRP disputes, which are, if necessary, resolved in the civil courts. However, rules outlining how the level of MRP is determined, which are established under the relevant directions, form the basis of any claim in most cases.

Existing exemptions from MRP provisions

There are two existing exemptions from the MRP provisions that are discussed in turn below. These are:

- ◆ electricity or gas used as a means of propulsion; and
- ◆ houseboats.

Electricity or Gas used as a means of propulsion

Electricity or gas used as a means of propulsion, e.g. natural gas vehicles, is exempted from the MRP rules. This is because the price of vehicle fuel is affected by other legislation and was never intended to be within the remit of the Utility Regulator.

Houseboats

The MRP rule does not apply unless it is used as a place of permanent habitation, and does not have the means of and is not readily capable of being adapted for self-propulsion.

Sanctions for non-compliance

The legislation allows the tenant to recover the amount of any excess payment made for electricity or gas, and also allows for the recovery of interest on that excess payment, providing that the Utility Regulator's direction permits this. Recovery is a civil matter and would normally be pursued through the Small Claims Court. The Utility Regulator would have no direct involvement in the proceedings.

Chapter 3 – Utility regulator Proposal

Electricity and gas unit price: pass-through of purchase costs

It is proposed that a pass-through rule is introduced. That is the re-sale unit price for electricity or gas will be the same as that paid by the landlord.

To the extent that landlords are prepared to purchase fuel in the competitive market, a pass-through rule means that tenants receive a direct benefit from that market. Conversely, a pass-through rule means that whatever the landlord's purchasing strategy may be, he can only pass on his direct expenditure to his tenants and is therefore not strongly incentivised to reduce these costs. Landlord's incentives will also depend on the extent of competition in the property rental market.

The pass-through method will transfer to tenants, who are the end consumers, the benefit of the overall downward trend in prices which landlords are likely to pay. As the Utility Regulator's intention is to bring the benefits of the competitive market to all consumers, where appropriate, a pass-through of costs from landlords to tenants would deliver this directly. The Utility Regulator proposes that this method should be used in the future setting of the MRP for electricity and gas.

Comments on this proposal are invited.

Appendix 1: Current electricity statute – Article 47 of the Electricity (Northern Ireland) Order 2003

Fixing of maximum charges for reselling electricity

47.—(1) This Article applies to electricity supplied to a consumer's premises by an authorised electricity supplier, that is to say, a person who is authorised by a licence or exemption to supply electricity.

(2) The Authority may fix maximum prices at which electricity to which this Article applies may be resold, and shall publish any prices so fixed in such manner as in his opinion will secure adequate publicity for them.

(3) Different prices may be fixed under this Article in different classes of cases, which may be defined by reference to areas, tariffs applicable to electricity supplied by the authorised electricity suppliers or any other relevant circumstances.

(4) If any person resells electricity to which this Article applies at a price exceeding the maximum price fixed under this Article and applicable thereto, the amount of the excess shall be recoverable summarily by the person to whom the electricity was resold

Appendix 2: Current gas statute – Article 24 of the Gas (Northern Ireland) Order 1996

Fixing of maximum charges for reselling gas

24.—(1) This Article applies to gas supplied to a consumer's premises by an authorised gas supplier, that is to say, a person who is authorised by a licence or exemption to supply gas to those premises.

(2) The Authority shall from time to time direct that the maximum prices at which gas to which this Article applies may be resold—

- (a) shall be such as may be specified in the direction; or
- (b) shall be calculated by such method and by reference to such matters as may be so specified,

and shall publish directions under this Article in such manner as in his opinion will secure adequate publicity for them.

(3) A direction under this Article may—

- (a) require any person who resells gas to which this Article applies to furnish the purchaser with such information as may be specified or described in the direction; and
- (b) provide that, in the event of his failing to do so, the maximum price applicable to the resale shall be such as may be specified in the direction or shall be reduced by such amount or such percentage as may be so specified.

(4) Different directions may be given under this Article in different classes of cases, which may be defined by reference to areas, tariffs applicable to gas supplied by the authorised gas suppliers or any other relevant circumstances.

(5) If any person resells gas to which this Article applies at a price exceeding the maximum price determined by or under a direction under this Article and applicable to the resale—

- (a) the amount of the excess; and
- (b) if the direction so provides, interest on that amount at a rate specified or described in the direction,

shall be recoverable by the purchaser.

(6) Nothing in this Article shall apply in relation to the resale of gas for use in a motor vehicle which is constructed or adapted to use gas as fuel for its propulsion.

Appendix 3: Article 4 of the Energy (Northern Ireland) Order 2003

4. - (1) The functions, property, rights and liabilities of the Director General of Gas for Northern Ireland and the Director General of Electricity Supply for Northern Ireland ("the Directors") are transferred to the Authority.

(2) Any statutory provision or any document which -

(a) refers to either of the Directors; and

(b) was passed or made before the transfer effected by paragraph (1),

shall have effect after the transfer, so far as necessary for the purposes of or in consequence of the transfer, as if references to the Director were references to the Authority.

(3) Anything which -

(a) has been done by or in relation to either of the Directors for the purpose of or in connection with anything transferred by this Article; and

(b) is in effect immediately before it is transferred,

shall be treated as if done by or in relation to the Authority.

(4) Anything (including legal proceedings) which -

(a) relates to anything transferred; and

(b) is in the process of being done by or in relation to either of the Directors immediately before it is transferred,

may be continued by or in relation to the Authority.

(5) Nothing in this Article affects the validity of anything done by or in relation to either of the Directors before the transfer takes effect.