



**AN BILLE FUINNIMH (FORÁLACHA ILGHNÉITHEACHA),
2011
ENERGY (MISCELLANEOUS PROVISIONS) BILL 2011**

EXPLANATORY MEMORANDUM

Introduction

The main provisions of the Bill are—

- to provide a legal framework in primary legislation for an Energy Demand Reduction Target Programme which will place energy efficiency obligations on energy suppliers and distributors;
- to amend the provisions of the Energy (Miscellaneous Provisions) Act 1995 regarding the theft of electricity and gas to reflect the current structure and regulation of the sector with the establishment of Commission for Energy Regulations (CER) as the Energy Regulator, the separation of the ESB and Bord Gáis's transmission and distribution operations from the companies' supply functions and the liberalisation of the market which has led to a number of independent suppliers operating in the electricity and gas markets;
- to restate in primary legislation the pension entitlements of employees of Bord Gáis Eireann who transferred to Gaslink and employees of the Electricity Supply Board who transferred to ESB Networks Ltd. and Eirgrid plc;
- to amend the Electricity Regulation Act 1999 in relation to the powers of Gas Safety Officers in investigating breaches under the Act;
- to strengthen the electrical safety functions of the CER under the Electricity Regulation Act 1999 by providing for the appointment by the CER of Electrical Investigation Officers;
- to provide for the safety regulation of LPG distribution networks and LPG safety incident reporting;
- to repeal section 11 of the 1927 Electricity Supply Act which has been superseded by other legislation and codes;
- to repeal section 17(2) of the 1976 Gas Act which is deemed obsolete; and
- to provide for the correction of minor typographical errors in energy legislation.

Provisions of the Bill

Part 1 — Preliminary and General (Sections 1 and 2)

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

Section 2 provides for definitions of certain Acts and Regulations referred to in the Bill.

Part 2 — Miscellaneous Amendments to Energy Acts (Sections 3 to 20)

Section 3 restates in primary legislation superannuation provisions which were previously set out in secondary legislation. EU Directive 2003/55/EC and EU Directive 2003/54/EC required Member States to make provision for the unbundling of both electricity and gas transmission and distribution system operators. As a result of EU requirements in regard to unbundling of electricity transmission and distribution businesses from supply businesses, two new companies EirGrid and ESB Networks were set up. EirGrid plc has responsibility for the operation of Ireland's electricity transmission system operations. ESB Networks Ltd is the licensed operator of the electricity distribution system. Employees of these two companies include staff who transferred their employment from the ESB. Superannuation arrangements for transferees were provided under the European Communities (Internal Market in Electricity) (Electricity Supply Board) Regulations 2008 (S.I. No. 280 of 2008) in the case of ESB Networks Ltd. and the European Communities (Internal Market in Electricity) Regulations, 2000 (S.I. No. 445 of 2000) in the case of Eirgrid. The arrangements set out in S.I. No. 280 provides that an ESB staff member who transferred to ESB Networks Ltd. who immediately before the transfer a member of a superannuation scheme continues to be a member of that scheme. The arrangements set out in S.I. No. 445 of 2000 also provided that a person whose employment was transferred to Eirgrid plc., who was immediately before the transfer a member of a superannuation scheme, can continue to have their superannuation benefits and the contributions payable in respect of their superannuation scheme membership paid out of or into the ESB fund into which that person was, before the transfer, paying superannuation contributions.

The Attorney General advised that it was more appropriate that these superannuation provisions be provided for in primary legislation. This section underpins in primary legislation the legal rights of those ESB staff who transferred employment to these two companies. The provision does not go beyond the secondary legislation provision.

Section 4 As stated under *Section 3*, EU legislation requires Member States to make provision for the unbundling of both electricity and gas transmission and distribution system operators. The provisions of the EU Directive in relation to gas unbundling were transposed into Irish law by the European Communities (Internal Market in Natural Gas) (BGÉ) Regulations 2005 (S.I. No. 760 of 2005) ("the 2005 Regulations") as amended by the European Communities (Internal Market in Natural Gas) (BGÉ) (Amendment) Regulations 2007 (S.I. No. 377 of 2007) ("the 2007 Regulations"). These regulations provided for the setting up of a new subsidiary of BGÉ called Gaslink as the gas transmission system operator. The regulations provided rights to former employees of BGÉ who transferred to Gaslink, to remain within an existing BGÉ

superannuation scheme. The Attorney General advised that it was appropriate that these superannuation provisions be provided for in primary legislation.

Section 5 amends theft of electricity and gas provisions at sections 15 and 16 of the Energy (Miscellaneous Provisions) Act 1995 to reflect the current structure and regulation of the electricity and gas sector with the establishment of CER as the energy regulator, the separation of the ESB and Bord Gáis's transmission and distribution operations from the companies' supply functions and a liberalised market where a number of independent suppliers are currently operating in electricity and gas market.

With the liberalisation of the electricity and gas sectors it is appropriate to extend existing provisions relating to the theft of electricity and gas to independent energy suppliers and to the customers of those suppliers. The legislation extends the offence provision to all electricity and gas consumers, irrespective of supplier.

A provision is also included to provide for Deemed Contracts of Supply under limited circumstances and subject to safeguards. The rationale is to provide a mechanism whereby energy suppliers may recover debts from the owner or occupier of a premise that has been consuming gas in the absence of a contract to supply energy being in place.

Section 6 amends section 9 of the Electricity Regulation Act 1999 by inserting a new section 9EA to provide for the appointment of an Electrical Investigation Officer. The Bill proposes that the CER may appoint Electrical Investigation Officers to investigate whether designated electrical works are carried out safely and by registered electrical contractors. The provision also details the scope and powers of the electrical investigation officer.

Section 7 amends section 9C of the Electricity Regulation Act 1999 by extending the powers of the CER in regard to the regulation of electrical safety. It proposes to empower the CER to require electricity undertakings to provide information on electrical safety to electricity customers and to the public.

Section 8 proposes to amend section 9J of the Electricity Regulation Act 1999 in order to clarify the investigative powers of Gas Safety Officers. The amendment will strengthen the powers of the CER regarding the investigation and prosecution of alleged offences.

Section 9 provides for the correction of minor typographical and numbering errors in sections 9L, 9M, 9N and Part IIA of the Electricity Regulation Act of 1999.

Section 10 to 16 — provide for the clarification in primary legislation of provisions set out in Part 5 of the European Communities (Energy End-use Efficiency and Energy Services) Regulations 2009 (S.I. No. 542 of 2009). The provisions provide a legal framework in primary legislation for the placing of energy efficiency obligations on energy suppliers and distributors that are currently regulated under secondary legislation. The Bill proposes to empower the Minister for Communications, Energy and Natural Resources to set quantitative and qualitative multi-annual energy efficiency targets to be met by energy suppliers and distributors through the provision and promotion to their customers of energy services and energy efficiency improvement measures such as insulation, efficient boilers, renewables etc. Similar schemes in other

jurisdictions have been shown to lead to significant levels of energy efficiency savings, as they leverage the existing trusted business relationships between customers and their energy suppliers. Moreover, the recast Energy Services Directive, whose publication is imminent, is anticipated to include an explicit requirement for Member States to adopt energy saving obligation schemes and impose mandatory targets on obligated parties.

Section 10 provides for the definitions of certain terms.

Section 11 provides that the Minister for Communications, Energy and Natural Resources may place energy efficiency obligations on energy suppliers by means of an energy efficiency notice. Where an energy supplier has not complied with an energy efficiency notice the Minister may issue directions to energy suppliers specifying remedial action. The section gives powers to the Minister to apply to the High Court for orders directing energy suppliers to comply with the Minister's direction.

Section 12 provides that energy suppliers may establish voluntary agreements for the purpose of promoting energy efficiency to final customers, in lieu of obligations at *section 11(2)*. The section also provides for the approval and revocation of such agreements by the Minister.

Section 13 provides for the appointment of another person to perform the functions of the Minister under *sections 11* and *12*.

Section 14 provides for the establishment by the Minister, subject to the consent of the Minister for Finance, of an Energy Efficiency Fund. The objectives of the Fund, which will be managed by the Minister, are primarily to support the delivery of energy efficiency improvement programmes and measures and to promote the development of a market for energy efficiency improvement measures. The Fund will be managed by the Minister. The section provides that the Fund may issue or provide grants and loans in order to support the delivery of energy efficiency programmes and measures, and to promote energy audits and financial instruments for energy savings.

Section 15 is a standard provision providing for the service of notice and directions.

Section 16 provides for the revocation of Part 5 of the European Communities (Energy End Use Efficiency and Energy Services) Regulations 2009.

Sections 17 to 19 provide for the extension of the natural gas safety framework to currently unregulated activities of Liquid Petroleum Gas (LPG) undertakings and also provides for the promotion of LPG safety. *Section 17* amends section 2(1) of the Electricity Regulation Act 1999 to provide for the definition of a number of terms for ease of reference. The section expands the functions of the CER in relation to the regulation of the activities of LPG undertakings with respect to safety. The proposals provide for the establishment of a safety framework for LPG, similar to the safety framework for natural gas undertakings.

Section 18 provides for the amendment of the Electricity Regulation Act 1999 by inserting new sections 9JA to 9JG to provide for LPG safety licences, for the giving of directions by the CER ("improvement plans"), for the serving of "improvement notices" on an undertaking where an undertaking has failed to comply with

a direction of the CER. Section 9JC provides for the serving of “prohibition notices” prohibiting the carrying out of certain activities where the CER is of the view that such activities pose a substantial risk to public safety and for appeal to the High Court against such notice. The section also provides for an offence provision in the event of failure to comply with a prohibition notice. Section 9JD gives powers to the CER to apply to the High Court for an order restraining or prohibiting activities of a gas or LPG undertaking where the activities of a gas or LPG undertaking pose a risk to safety of human life, gas or LPG infrastructure or property. Section 9JE provides for an LPG safety licensing regime to be established by the CER for LPG distributors, for monitoring of the activities of licensees by the CER and for the making of regulations by the CER specifying the criteria in accordance with which an application for a safety licence may be determined by the CER. Section 9JF provides for the charging of safety licence fees by the CER. Section 9JG provides for the making of regulations by the CER in regard to the reporting and investigation of LPG incidents to the CER.

Section 19 relates to an amendment to Schedule 1 of the Electricity Regulation Act 1999. It gives the CER powers to impose an annual levy on LPG undertakings for the purpose of meeting expenses incurred by it.

Section 20 provides for the repeal of Section 11 of the Electricity (Supply) Act 1927, which requires Board Members of ESB to dispose of all shares in any electrical undertaking that they own or in which they have an interest, within three months of appointment or the Board Member will be deemed disqualified for and to have vacated his/her office. This section also prohibits Board Members purchasing or obtaining an interest in any electrical undertakings. The provisions of the 1927 Act have been superseded over the years by other requirements, including the Ethics in Public Office Acts 1995 and 2001, the Code of Practice for the Governance of State Bodies and the Regulations of the Board of ESB. The combined effect of these provisions is to require full disclosure in all cases where a material conflict of interest may arise, with more onerous and relevant obligations than those contained in 1927 Act.

It also proposed to repeal subsection 17(2) of the Gas Act 1976 which imposes on BGE a time limit of three years in respect of the engagement of consultants. The repeal is proposed on the basis that procurement by State bodies is now subject to detailed regulation under EU law and to the requirements of the Code of Practice for the Governance of State Bodies.

The repeals of paragraph (c) of section 26 of the Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010 and of paragraph (c) of section 3 of the Petroleum (Exploration and Extraction) Act 2010 are minor technical repeals.

Exchequer and Financial Implications

With regard to implementation of the energy efficiency obligation scheme for energy suppliers and distributors, this scheme offers the potential to lead to significant levels of energy efficiency savings for consumers and to ultimately reduce national energy consumption and associated carbon emissions. There will be some additional Exchequer costs arising from the energy efficiency provisions, but cost benefit analysis and previous relevant studies both within Ireland and internationally suggest that this is likely to be significantly outweighed by the benefits.

There is likely to be an administrative cost burden to the Minister and the SEAI of implementation, monitoring and enforcement of energy efficiency obligations along with the added complexity of assessing and monitoring targets. Additional costs may also arise for the Minister in making an Energy Efficiency Fund open to energy suppliers and distributors who are subject to a mandatory energy efficiency target. This Fund is intended to offer an alternative funding model to the present grant based approach to promoting energy efficiency measures by compensating energy suppliers and distributors for making measures available to their customers at a pre-agreed discount. However, the above costs would be offset by a reduced administrative overhead for SEAI in no longer delivering a number of large scale grant based programmes, such as the Home Energy Saving Scheme, Warmer Homes Scheme and Greener Homes Scheme, which have all been streamlined under the Better Energy Homes programme.

There will be no costs to the Exchequer arising from the remaining elements of this Bill. The CER currently has responsibility for electrical and gas safety matters and has put safety frameworks in place. The LPG proposals provide for the extension of the gas safety framework to LPG. The CER is funded by means of a levy on industry and does not receive Exchequer funding. The LPG proposals will allow the CER to levy the LPG sector. With regard to human resource requirements, the additional resource requirements to enable the CER to carry out enhanced electrical, gas and LPG safety functions will be accommodated within the current resources taking account of Government policy in this regard.

*An Roinn Cumarsáide, Fuinnimh agus Acmhainní Nádurtha,
Meán Fómhair, 2011.*

Energy (Miscellaneous Provisions) Bill 2011

Note

The Department of Communications, Energy and Natural Resources has prepared this Regulatory Impact Assessment (RIA) to accompany a Memorandum for Government on the drafting of an Energy (Miscellaneous Provisions) Bill. The proposal consists of the restatement of a number of secondary legislation provisions. In addition, it is proposed to amend a number of provisions in miscellaneous energy Acts. The relevant Acts are the Electricity Supply Board (Superannuation) Act 1942, the Gas Act 1976, the Energy (Miscellaneous Provisions) Act 1995 the Electricity Regulation Act 1999, as amended by the Energy (Miscellaneous Provisions) Act 2006. It is also proposed to repeal sections 11 of the Electricity (Supply) Act 1927 and subsection 17(2) of the Gas Act 1976. It also corrects, by repeal and the substitution of amending text, minor typographical errors in paragraph (c) of section 26 of the Energy (Biofuel Obligation and Miscellaneous Provisions) Bill 2010, and paragraph (c) of section 3 of the Petroleum (Exploration and Extraction) Act 2010

1.0 Policy and Background Context

Energy policy has a key role to play in building sustainable social and economic development. The Energy Policy Framework 2007 - 2010 sets out actions and targets for the energy policy framework to 2020, to support sustainability, competitiveness and security of supply and meet the needs of all consumers. The Paper sets a clear path for meeting the Government's goals of ensuring safe and secure energy supplies, promoting a sustainable energy future and supporting competitiveness.

Competition is developing in Ireland's electricity and gas market and is now delivering real and measurable benefits to energy consumers. EU legislation aims to further liberalise EU electricity and gas markets. Ireland is strongly supportive of liberalisation as a means to improve competition in the market to the benefit of consumers and also to develop an integrated EU energy market. With a view to promoting these overall objectives, while also ensuring compliance with EU provisions, it is critical that energy legislation reflect these objectives.

2.0 Objectives

The long-term objectives of the legislative provisions proposed in this Bill are to help achieve the Government's energy efficiency target of 20% energy savings by 2020, to enhance and strengthen energy legislation to ensure compliance with EU legislation, to ensure that competitiveness is supported and to provide a robust electrical and gas safety regime.

The immediate objectives are to amend a number of provisions in existing legislation, to restate provisions currently set out in secondary legislation and to repeal specific obsolete energy provisions in order to ensure that energy legislation is fit for purpose. Section 11 of the Bill, which imposes energy efficiency targets on energy suppliers and distributors as part of the Government's proposed national retrofit programme, was the subject of a public consultation in August 2009. The remaining proposals in the Bill do not contain any substantive changes in policy.

The objectives of the Bill are to:

- (a) Restate and expand energy efficiency provisions currently set out in secondary legislation in order to provide a legal framework for the placing of energy efficiency obligations on energy suppliers and distributors,
- (b) Amend provisions of the Electricity Regulation Act 1999, as amended, in regard to the Commission for Energy Regulation's (CER) role in regard to electrical, gas and LPG safety to provide for:
 - the appointment of Electrical Investigation Officers with powers of investigation,
 - the enhancement of powers of Gas Safety Officers, and
 - the extension of gas safety provisions to liquid petroleum gas (LPG),
- (c) Amend the Energy (Miscellaneous Provisions) Act 1995 relating to the theft of gas and electricity and to make provision for the concept of Deemed Contracts,

- (d) Restate superannuation provisions relating to certain former employees of ESB and BGE who transferred to Eirgrid, ESB Networks Ltd and Gaslink Ltd,
- (e) Repeal section 11 of the Electricity (Supply) Act 1927 and section 17(2) of the Gas Act 1976, and
- (f) Correction, by repeal and the substitution of amending text, of minor typographical errors in paragraph (c) of section 26 of the Energy (Biofuel Obligation and Miscellaneous Provisions) Bill 2010, and paragraph (c) of section 3 of the Petroleum (Exploration and Extraction) Act 2010.

3.0 Policy Options

3.1 Consideration of Options

In considering options it is not proposed to focus on the correction of typographical errors, the repeal of section 11 of the Electricity (Supply) Act 1927, or the repeal of section 17(2) of the Gas Act 1976 referred to at No 2 above.

A. Do nothing

The “do nothing” option is primarily being included for benchmarking purposes and will not be examined in detail as part of this RIA because it is not envisaged that this option will be pursued in practice.

Adopting the “do nothing” option in relation to superannuation legislation increases the risks of legal actions being taken against the State challenging the validity of certain current superannuation provisions.

In regard to the energy obligation scheme for energy suppliers and distributors, adopting the “do nothing” option would leave the Minister with the power under S.I. No. 542 of 2009 to place obligations on energy suppliers and distributors to promote and offer to their customers energy efficiency improvement measures, energy audits and energy services. However, the Minister would have no legal power to require those energy suppliers and distributors to achieve any particular level of energy savings from this initiative. It is felt that this would seriously undermine the purposes of the obligation and would pose an unacceptable risk of the energy efficiency obligation policy failing to achieve its potential for significant energy savings. The energy efficiency obligation policy arises from a requirement under article 6 of the EU Energy End Use Efficiency and Energy Services Directive (Directive 2006/32/EC).

While the current Directive does not provide explicitly for mandatory targets, the Minister is of the view that this is required in the spirit of article 6 and in order to successfully emulate other such obligation schemes in other Member States that were the genesis of the provisions of article 6. Moreover, the recast Energy Services Directive, whose publication is imminent, will include an explicit requirement for Member States to adopt energy saving obligation schemes and impose mandatory targets on obligated parties.

In regard to the theft of gas and electricity proposals, adoption of this option would mean continued reliance by industry on the 1995

Act which is deficient in its ability to address energy theft in a competitive market with independent suppliers.

The “do nothing” option would allow legal ambiguity to remain in regard to the powers of the CER to investigate alleged electrical and gas safety offences impacting negatively on enforcement of safety provisions. It would not remove the gaps in regard to LPG safety and would not address risks to public safety. Legal ambiguity would also remain in regard to superannuation arrangements already provided for in secondary legislation.

B. Self Regulation

Legislative provisions are set out in the 1995 Act in relation to the theft of gas and electricity and in the 2006 Act in regard to electrical and gas safety regimes. In view of the fact that legislation already exists, self regulation is not appropriate as a means of addressing outstanding legislative lacunae.

Self-regulation does not reduce the incidence risk of electrical or gas accidents caused by negligence or sub-standard work on the part of electrical or gas contractors. In the LPG sector, which is currently self-regulated, there have been a number of fatalities in recent years, most recently earlier this year. Exclusion of LPG safety from the CER’s gas safety regime could result in undermining the gas safety regime, which is fully operational. Self regulation is not justifiable on grounds of ongoing risks to health and safety.

The provisions of section 11 concerning the placing of energy efficiency targets on energy suppliers and distributors involves the placing of a target on the sector as a whole, as well as potentially on individual suppliers or distributors. It is felt that self regulation cannot deliver the achievement of a sectoral target. Section 12 provides for an element of self regulation by allowing individual energy suppliers or distributors enter into voluntary agreements with the Minister and the Sustainable Energy Authority of Ireland (SEAI) to achieve a certain level of energy savings. Where such a voluntary approach is not considered practical or likely to succeed, the Minister can impose a mandatory target by Order. There will be extensive dialogue with the sector and with individual energy suppliers and distributors before specific targets are decided.

C. Amend existing legislation

Restatement of those provisions already provided in secondary legislation will provide legal certainty and eliminate the risk of legal challenges against the State. In regard to energy efficiency obligations, the provisions will enhance and strengthen existing provisions.

The proposed amendments to the Act of 1995 in regard to theft provisions will allow all energy suppliers to investigate alleged theft and ultimately improve the revenue protection regimes in the gas and electricity market.

Proposals in regard to electrical and gas safety are proposed in the interests of providing the CER with robust powers of enforcement and also for the avoidance of doubt. The objective of the LPG safety proposals is that by extending the CER’s safety function to LPG, as originally envisaged under the 2006 Act, to address a gap in the LPG safety regime and reduce the incidence of LPG accidents.

4.0 Costs, Benefits and Impacts

4.1 Costs

A. Do Nothing

The main costs under Option A are charges on the consumer. Such charges arise in regard to ongoing financial losses by energy suppliers due to theft of energy which must ultimately be paid for by responsible energy consumers. While it is difficult to estimate the level of losses, the CER believe the financial burden on the energy consumer could be as high as €30 million per annum for the electricity market alone. In addition, legal challenges against the State could arise as a consequence of failure to restate secondary legislation provisions. Failure to provide a robust electrical, gas and LPG safety regime that enhances and protects public safety also increases the risk of legal challenges against the State.

With regard to the energy efficiency provisions concerning the placing of energy efficiency obligations on energy suppliers and distributors, the ‘do nothing’ option leaves the existing provisions of S.I. No. 542 of 2009 in place. The obligations under S.I. No. 542 relate to the offer and promotion to customers of competitively priced energy efficiency improvement measures, energy audits and energy services.

Under S.I. No. 542 of 2009, a largely similar administrative cost burden will arise under the “do nothing” option for the Minister and SEAI in implementing, monitoring and enforcing the existing provisions concerning the placing of energy efficiency obligations on energy suppliers and distributors, albeit without mandatory targets.

B. Self Regulation

Costs associated with Option B are similar to Option A.

C. Amend existing legislation

No increased costs to the consumer are anticipated arising from Option C.

With regard to implementation of the energy efficiency obligation scheme for energy suppliers and distributors, this scheme offers the potential to lead to significant levels of energy efficiency savings for consumers and to ultimately reduce national energy consumption and associated carbon emissions. There will be some additional Exchequer costs arising from the energy efficiency provisions, but cost benefit analysis and previous relevant studies both within Ireland and internationally suggest that this is likely to be significantly outweighed by the benefits.

While the costs to the Minister and SEAI of implementation, monitoring and enforcement of energy efficiency obligations will be largely similar under the “do nothing” option, as outlined in section 4.1(A), some additional costs may arise due to the added complexity of assessing, imposing and monitoring targets. Additional costs may also arise for the Minister in making an Energy Efficiency Fund open to energy suppliers and distributors who are subject to a mandatory energy efficiency target. This Fund is intended to replace the present grant-based approach to promoting energy efficiency measures by compensating energy suppliers and distributors for making measures available to their customers at a pre-agreed discount. However, the above costs will be offset by a reduced administrative overhead for SEAI in no longer delivering a number of large scale grant-based

programmes, such as the Home Energy Saving Scheme, Warmer Homes Scheme and Greener Homes Scheme.

The CER is funded by a levy on industry and is not in receipt of Exchequer funding. With regard to costs associated with the safety function, the CER is already implementing the electrical and gas safety regime. While extension of the safety regime to the remaining unregulated segments of the LPG sector will be an additional responsibility for the CER, the LPG sector is small and there are synergies with gas safety. Efficiencies are likely to be made. The human resource requirements to enable the CER to carry out its electrical, gas and LPG safety functions will be accommodated within existing staff resources provided to the CER, as authorised by the Department of Finance.

Energy theft proposals have the potential to reduce the incidence of theft leading to potential small reductions in consumer energy tariffs.

4.2 Benefits

A. Do nothing

Option A has negative benefits for industry, energy consumers and the general public.

Failure to address lacunae in regard to electrical, gas and LPG safety provisions does nothing to reduce the risk to public safety as the powers of the CER in regard to the safety function will be less than optimum. Concerning the theft of electricity and gas, consumers who interfere with electricity and gas meters will continue to benefit financially and legislative gaps will make investigation of alleged cases of theft difficult.

In regard to the obligation scheme for energy suppliers and distributors, adopting the “do nothing” option would leave the Minister with the power under S.I. No. 542 of 2009 to place obligations on energy suppliers and distributors to promote and offer to their customers energy efficiency improvement measures, energy audits and energy services. However, the Minister would have no legal power to require those energy suppliers and distributors to achieve any particular level of energy savings from this initiative. It is felt that this would seriously undermine the purposes of the obligation and would pose an unacceptable risk of the energy efficiency obligation policy failing to achieve its potential for significant energy savings. While some customers of the energy suppliers and distributors concerned could be expected to take up the measures and services offered by the energy supplier or distributor, the policy would lack a lever to motivate the companies concerned to achieve a significant take-up. SEAI analysis indicate that a target level of energy savings amounting to 2,000 GWh could be achieved over the first three years of implementation of a policy involving mandatory energy saving targets. This level of savings would be unlikely to be achieved under the “do nothing” scenario.

B. Self Regulation

Pursuing Option B has similar negative benefits as identified for Option A.

In regard to the energy efficiency obligation scheme for energy suppliers and distributors, it is conceivable that some individual energy suppliers or distributors could be persuaded to voluntarily commit to achieving a particular target level of energy efficiency

savings involving the offer and promotion of energy efficiency improvement measures, energy audits and energy services, in accordance with S.I. No. 542 of 2009.

However, in the absence of regulation, it is doubtful that the full range of energy suppliers and distributors who will fall within the scope of the Bill would commit voluntarily to such targets. In addition, an important element of the proposed Bill will be penalties for failure to achieve target energy savings. It is difficult to see energy suppliers and distributors voluntarily paying penalties to the Exchequer for failure to achieve voluntary targets. However, such voluntary targets would have significantly less value without a mechanism to motivate their achievement. Regulatory penalties provide such a mechanism.

A self regulation mechanism such as a voluntary commitment by energy suppliers and distributors to achieve a particular level of energy savings may potentially involve a lesser cost to the Exchequer. It is unlikely that such a voluntary approach could achieve significant energy savings through take-up by the companies' customers of energy efficiency measures, without a discount element similar to that envisaged under the national retrofit programme or a grant similar to that presently available under the Home Energy Saving Scheme. Therefore, any Exchequer saving would most likely arise from a reduced administrative overhead relating to assessing, imposing and monitoring targets, as outlined in section 4.1(C). Some element of administrative overhead relating to these functions would likely still be required, even in a situation of voluntary targets. Therefore, any saving would be small.

The 2006 Act provides the CER with responsibility for regulation of the activities of natural gas undertakings and natural gas installers with respect to safety. Subsequently, the Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010 extended the gas safety regime to the regulation of the activities of LPG installers. It was as a consequence of a number of safety incidents in the past and with a view to improving safety standards in this self-regulated sector that it was agreed that the CER should be given responsibility for electrical, gas and LPG safety.

C. Amend existing legislation

Option C has positive implications for regulation, industry and the consumer.

SEAI analysis indicates that a target level of energy savings amounting to 2,000 GWh could be achieved over the first three years of implementation of a policy involving mandatory energy saving targets.

Initial objectives for the national retrofit programme are to deliver energy efficiency upgrades to one million residential, public and commercial buildings by 2020, realising energy savings of 8,000 GWh in the process. While not all of this activity will be realised through obligations on energy suppliers and distributors, the obligations and related targets form the cornerstone of the retrofit programme.

The restatement of secondary legislation provisions provides for more robust regulation. Amending legislation in regard to energy theft and electrical, gas and LPG safety will strengthen CER powers to investigate alleged contraventions. Successful prosecutions act as a deterrent. The provisions enabling the Commission to direct electrical and LPG undertakings to advise and provide information

to their final customers and to the public on works will result in a better informed public and a more responsible industry and will have a positive impact on safety of the public. Ireland's image as a place to do business will be enhanced.

4.3 Potential Impacts

4.3.1 Impacts on National Competitiveness

The proposals contained in the Bill have no significant impacts on national competitiveness.

The commercial buildings to be upgraded under the national retrofit programme through energy efficiency obligations and related targets on energy suppliers and distributors will reduce energy costs for the companies concerned, thus contributing to their improved competitiveness.

4.3.2 Impact on socially excluded or vulnerable groups

A core objective of the Better Energy Programme will be to improve the energy affordability, health and comfort levels of vulnerable members of society. The Programme will achieve this by prioritising low income households for energy upgrades. This element will be written into the targets to be imposed on energy suppliers and distributors under this Bill. The Bill has no other direct impacts on socially excluded or vulnerable groups.

4.3.3 Impacts on the Environment

The proposals relating to the Energy Efficiency Obligation Scheme will have a positive impact on the environment. Reduced energy use will result in reduced carbon and other greenhouse gas emissions.

4.3.4 Significant Policy Change in the Economic Market

The amendments do not involve a policy change in the economic market. Rather, they strengthen and enhance existing policy.

4.3.5 Impacts on Consumers

The impact on consumers and competition can be expected to be positive. Enhancement of safety provisions will have a positive impact on safety of the public. The inability of suppliers to recoup financial losses arising from unauthorised consumption of gas is ultimately borne by responsible customers. The proposals will redress this situation.

4.3.6 Impacts on the Rights of Citizens

Not relevant.

4.3.7 Compliance Burden

Under Options A and B the compliance burden would be no greater than at present. Option C will not impose a disproportionate compliance burden on the energy sector, the electrical, gas and LPG sector or the public.

5. Consultation

In formulating legislative proposals the Department and the CER in particular have consulted broadly with stakeholders. In relation to the issue of superannuation, the Department has consulted with the ESB, BGE and the Attorney General.

In regard to the energy efficiency obligation scheme, the Department engaged in a public consultation exercise in August 2009 and again in September 2010.

The CER has consulted with stakeholders on the revenue protection proposals. A number of workshops were held and feedback received has resulted in better informed proposals. The CER has carried out two public consultations in regard to the issue of LPG safety. The relevant documentation is available on the CER website at www.cer.ie

6. Review

The Department, in liaison with the CER and SEAI as appropriate, will monitor implementation of the proposals to ensure that the objectives will be achieved on enactment.

*An Roinn Cumarsáide, Fuinnimh agus Acmhainní Nádurtha,
Meán Fómhair, 2011.*