



**Applications by Gas Licence Holders for the Grant of Necessary Wayleaves
– Proposed Guidance for Applicants and Landowners and/or Occupiers**

March 2017

1 Introduction

- 1.1 The Consumer Council is a non-departmental public body (NDPB) established through the General Consumer Council (Northern Ireland) Order 1984. Our principal statutory duty is to promote and safeguard the interests of consumers in Northern Ireland (NI).
- 1.2 The Consumer Council has specific statutory duties in relation to energy, postal services, transport, and water and sewerage. These include considering consumer complaints and enquiries, carrying out research and educating and informing consumers.

2 Executive Summary

- 2.1 The Consumer Council supports the development of an efficient natural gas industry in NI. Natural gas offers consumers a choice of fuel that has been cheaper than oil for a sustained period of time¹, provides consumer protection through its regulatory framework, is cleaner than other fossil fuels and provides payment methods that help consumers manage their spending on energy.
- 2.2 We welcome the opportunity to respond to the Department for the Economy (the Department) consultation paper: Applications by Gas Licence Holders for the Grant of Necessary Wayleaves – Proposed Guidance for Applicants and Landowners and/or Occupiers.

¹ Over the last 5 years, home heating oil has been on average 3.29% more expensive than natural gas. www.phoenixnaturalgas.com/why-natural-gas/gas-vs-oil/.

3 Consultation Questions

(i) Is the guidance sufficiently clear in outlining the processes to be followed by gas licence holders and their representatives in applying for a necessary gas wayleave?

3.1 In the Consumer Council's view the guidance provides improved clarity to gas licence holders and a consistent uniformed approach with electricity arrangements. It is often the case that consumers feel isolated and vulnerable in wayleave disputes; therefore the new processes can provide improved safeguards for consumers within the compulsory wayleave process.

3.2 The Consumer Council welcomes that in advance of an application, consumers must be clearly communicated with and allowed 21 days to elapse otherwise the Department will quite rightly reject the application. We also believe it is appropriate that the Department outlines a consistent approach in how the applicant should present its case, with clarity on aspects including boundaries, proposed routes, occupation and ownership.

(ii) Is the role of the independent wayleave officer clearly explained?

3.3 The wayleave officer is a key figure in shaping the wayleave appeal. It is therefore crucial that their role, the level of

interaction to be expected and the outcome delivery is clearly defined.

3.4 We welcome paragraph 2.5 of Annex A as it outlines that the wayleave officer is appointed by the Department and crucially, is independent. It is imperative that this independent role is clear, especially to the landowner whom in many instances, is experiencing the compulsory wayleave process for the first time.

3.5 We also welcome paragraph 2.9 in that it provides clarity on the level of interaction anticipated with landowners and the gas company. This helps provide an overview of the process and to an extent, manages consumer expectations.

3.6 Paragraph 2.10 is particularly crucial as it outlines the format of the wayleave officer's final report to the Department for determination. The Consumer Council agrees with the necessity to analyse representations from each party and offer firm conclusions and a reasoned recommendation as to whether wayleave should be granted. It is absolutely imperative in the interests of fairness and transparency that a balanced view is considered and provided for determination.

(iii) Do you agree that the processes outlined afford landowners or occupiers sufficient opportunity to contribute their views on a gas wayleave application?

3.7 The Consumer Council has a complaints handling role and where possible we use this evidence base to inform our conclusions. The majority of concerns raised to us by consumers relate to issues such as poor communication, attitude of staff, permission to enter land and damage caused. In terms of compulsory wayleave disputes, we regrettably do not possess evidence from consumers on the process having sufficient opportunity to contribute their views on a wayleave application.

3.8 The revised guidance outlining that the wayleave officer will arrange to visit the landowner and/or owner to obtain views is an important inclusion. Consumers can feel isolated and uncertain about the compulsory wayleave dispute process and it is often a new and complicated experience for them. Therefore providing a personal visit at the consumer's property will help to demonstrate the independence of the inquiry. It will also help to build trust that will ultimately assist the consumer in contributing their views.

(iv) Is there any further information on the gas wayleave application process which would be useful to gas licence holders, landowners and/or occupiers?

3.9 A key concern for the Consumer Council is the feeling of isolation often experienced by consumers. Especially when involved in wayleave and/or compulsory wayleave disputes with large utility providers and often in their view, seemingly bureaucratic government departments.

3.10 It states that in advance of an application, consumers must be clearly communicated with and allowed 21 days to elapse otherwise the Department will quite rightly reject the application. We are concerned however that consumer's, particularly vulnerable consumers may simply choose to disengage in the belief they are powerless when the compulsory wayleave process is instigated by large utility providers.

3.11 We acknowledge and agree that formal engagement must entail written correspondence; however this is not often the preferred form of communication for consumers.

3.12 We would therefore encourage, in instances where written engagement has not been acknowledged by consumers, that efforts are made to engage using alternative means within the final 21 day threshold. This can be in the form of a telephone call or personal visit to help ensure the minimum 21 day period that has been undertaken is clearly communicated to and understood by the consumer.

(v) Do you have any comments on the Section 75 Equality of Opportunity screening form attached at Annex B or on the Department's decision that a full regulatory impact assessment is not required?

3.14 The Consumer Council agrees with the Department's assertion that the proposed revised arrangements provide an improved level of support in identifying and catering for Section 75 categories. In particular the personal engagement from the

independent Wayleave Officer will contribute significantly to identifying any Section 75 concerns.

3.15 We also take confidence that the revisions proposed will bring the gas sector into line with that already in existence in electricity, which has been successfully tried and tested by the Department. The Department has outlined its view that a full Equality Impact Assessment is not deemed necessary and the Consumer Council accepts this position. As it further states, the aim of the guidance is to ensure the Department has access to all relevant information to ensure it is informed, objective, transparent and equitable in its decision making. We trust that the Department, through its experience in dealing with compulsory wayleave for electricity believes the provisions in place ensures these objectives are achieved.

3.16 If you would like further information or to discuss any issues in this paper, please contact Mark Crawford on 028 9025 1640 or mark.crawford@consumercouncil.org.uk.



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