



Department for the
Economy

GAS (NORTHERN IRELAND) ORDER 1996

**APPLICATIONS BY GAS LICENCE HOLDERS FOR THE GRANT OF NECESSARY
WAYLEAVES**

GUIDANCE FOR APPLICANTS AND LANDOWNERS AND/OR OCCUPIERS

DEPARTMENT FOR THE ECONOMY

April 2017

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1. INTRODUCTION

- 1.1 The overriding objective of energy policy in Northern Ireland is to ensure secure, diverse, clean, efficient and sustainable supplies of energy at competitive prices.
- 1.2 The extension of the natural gas network is a key element in the achievement of this objective. The availability of a natural gas supply adds to the range of available fuels, increases consumer choice and contributes to reducing carbon emissions. It also has the potential to help reduce fuel poverty for domestic consumers and improve the competitiveness of domestic and industrial/commercial consumers.
- 1.3 Any extension of the natural gas network may require the installation of gas apparatus in land in private ownership. Gas companies therefore require permission from the landowner and/or occupier of the land to install the apparatus, together with future access to the land.
- 1.4 If a landowner or occupier refuses permission the gas company can apply to the Department for the Economy (DfE) for a necessary (that is compulsory) wayleave, as provided for in the **Gas (Northern Ireland) Order 1996 (“the 1996 Order”)**.
- 1.5 This note is intended to provide general guidance to:-
 - (a) Gas Companies: that is holders of a gas licence under the 1996 Order who propose to apply to the Department for a necessary wayleave to install and keep installed any gas apparatus; and
 - (b) Landowners and/or occupiers whose land is, or may be, the subject of such applications.
- 1.6 The legislative authority for the grant by the Department of necessary wayleaves for the installation of gas apparatus is contained in Article 13 and

paragraph 10 of Schedule 3 of the 1996 Order **(all subsequent references to paragraph's will relate to Schedule 3 of the 1996 Order)**.

- 1.7 Gas apparatus is defined at paragraph 1 as:-
- (a) pipes and other conduits for the conveyance of gas; and
 - (b) pressure governors, ventilators and other apparatus used for, or in connection with, the conveyance or supply of gas.
- 1.8 For convenience the term “gas pipeline” is substituted for the term “gas apparatus” throughout this guidance document.
- 1.9 It should be noted that a number of the procedures outlined in this document are not explicitly provided for in the legislation. However, the Department considers that it is important for these procedures to be followed by gas companies and landowners/occupiers in order to assist it in reaching fully informed, objective, transparent and equitable decisions.
- 1.10 This guidance may be refined in the light of experience processing applications for necessary wayleaves, with a view to improving the effectiveness and/or clarity of the procedures.
- 1.11 If you require any further information, or have any questions on necessary wayleaves, please contact the Department for the Economy, Netherleigh, Massey Avenue, Belfast, BT4 2JP (e-mail: Electricity.branch@economy-ni.gov.uk , telephone: (028) 9052 9567 or (028) 9052 9574).

2. REQUIREMENT FOR NECESSARY WAYLEAVES

- 2.1 A gas company requires permission to install and keep installed a gas pipeline on, over or under private land and to have access to that land for the purpose of inspecting, maintaining, adjusting, repairing or altering the pipeline.
- 2.2 In most cases the rights to install and keep installed the pipeline together with access to the land are secured by the gas company voluntarily.
- 2.3 However, if a voluntary agreement cannot be reached between the parties the gas company may apply to the Department for a necessary (or compulsory) wayleave under paragraphs 10-12 to enable the installation etc of the pipeline.
- 2.4 Paragraph 10(5) precludes the grant of a necessary wayleave for a gas pipeline where a dwelling covers the land or where valid planning permission exists for a dwelling to be constructed. Paragraph 10(6) stipulates that this provision does not apply in the case of land in respect of which a wayleave was granted before paragraph 10(5) came into operation (10 June 1996).
- 2.5 It is important to note that the statutory provisions entitle the **occupier** of the land and where the occupier is not also the owner of the land the **owner**, an opportunity of being heard by a person appointed by the Department (see paragraph 10(7)). This person (“the independent wayleave officer” or, for short “the wayleave officer”) will provide an independent view to the Department on whether a necessary wayleave should be granted.
- 2.6 The 1996 Order does not provide definitions of “owner” and “occupier”. As a general rule the Department takes the view that in accordance with general legal principles, the “owner” for purposes of Schedule 3 means a person who is entitled to be registered as the outright owner of the land or otherwise the person(s) who own(s) all of the legal estate in the land. The Department would not generally construe “owner” to mean a party who only has a beneficial interest in the land in question.

- 2.7 The Department also takes the view that the “occupier” is a party who has lawful possession (including temporary possession) of the land in question, or is exercising a legal right to use the land, for example, under the terms of a lease.
- 2.8 These can be difficult issues and the Department may require the parties to provide further information on the ownership or occupation of the land to help it reach a view. For example, in cases where there is a dispute.
- 2.9 Central to the wayleave enquiry process is affording landowners/occupiers the fullest opportunity to give their views. They will have a chance to meet and speak to the wayleave officer in person, make representations in writing and attend any informal meeting the wayleave officer decides to convene. The wayleave officer will also want to inspect the site of the proposed or actual pipeline. The gas company will also be invited to be represented and to express its views.
- 2.10 The independent wayleave officer appointed by the Department will consider the representations made by the gas company and the owner and/or occupier and produce a report for the Department. This will include an analysis of the representations by each party and any other relevant information together with firm conclusions and a reasoned recommendation as to whether the Department should grant a necessary wayleave to allow the installation or retention of the gas pipeline.
- 2.11 The Department will then decide on the basis of the wayleave officer’s report and recommendation – and any other information it may consider relevant - whether a necessary wayleave should be refused, granted or granted with conditions. (See section 9)

2.12 Before granting any necessary wayleave to which the Department wishes to attach conditions (other than the Department's standard conditions) the Department will consult the gas company regarding the technical feasibility, impact on other landowners and the cost.

3. REQUIRED NOTICES BEFORE MAKING A NECESSARY WAYLEAVE APPLICATION

- 3.1 The 1996 Order recognises two situations as regards applications for necessary wayleaves: where the application for the grant of a necessary wayleave relates to a new gas pipeline; and where it relates to an existing pipeline.
- 3.2 Where the gas company is unable to agree a voluntary wayleave (or easement) and wishes to apply to the Department for the grant of a necessary wayleave it is required, first of all, to give the landowner or the occupier a minimum period of 21 days written notice that it requires the grant of a necessary wayleave (see paragraph 10(1)(b)).
- 3.3 If after the specified period the landowner or occupier has failed to give the necessary wayleave, or has given the wayleave subject to terms and conditions to which the gas company objects, then the company may apply to the Department for the grant of the necessary wayleave in accordance with paragraph 10(4).
- 3.4 The written notice sets the statutory wayleave proceedings in operation. It is important to note that the landowner or occupier must have been given the notice and that the specified period of at least 21 days must have elapsed before the gas company may apply to the Department for a necessary wayleave. Any applications made before the specified notice period has elapsed will be rejected.
- 3.5 The application by the gas company to the Department should take the form of a letter and attach a copy of the notice to the landowner and/or occupier. The application should also clearly identify the land that is the subject of the necessary wayleave application and should state the name of the landowner and - where the landowner is not also the occupier - the occupier, along with an explanation of the nature of his occupation of the land (if known after reasonable enquiry).

- 3.6 In addition the gas company should attach a map clearly showing where possible, the boundaries of the landowner's and/or occupier's land and the route of the proposed gas pipeline across that land, including the position of ancillary apparatus (see Section 4.1(a) of this guidance note).
- 3.7 Paragraph 12 sets out the procedures to be followed where a landowner and/or occupier wishes a gas company to remove a gas pipeline from his land. The gas company may apply to the Department for a necessary wayleave to retain the pipeline in circumstances where the existing wayleave:

(a) Is determined by the expiration of a period specified in the wayleave

Some wayleaves are determined by the expiration of a period specified in the wayleave agreement.

In those cases the landowner and/or occupier who is party to the wayleave agreement may, either within 3 months before the end of the specified period or at any time afterwards, give notice to the gas company to remove the pipeline as provided for by paragraphs 12(1)(a) and 12(2)(a).

(b) Is terminated by the landowner or occupier in accordance with a term specified in the wayleave

Where there is a wayleave in existence and the landowner or occupier requires the gas pipeline which is the subject of that wayleave to be removed, he may give notice to the gas company to terminate the existing wayleave agreement in accordance with a term contained in it. This is provided for by paragraph 12(1)(b).

When the period required to terminate the wayleave has elapsed, the landowner or occupier may give a notice to the gas company to remove the gas pipeline at any time as provided for by paragraph 12(2)(b).

Accordingly, in such cases, two notices are required before the gas company may apply to the Department for the grant of a necessary wayleave: (1) a notice to terminate the existing wayleave; and (2) a subsequent notice to remove the gas pipeline.

(c) Ceases to be binding on the landowner or occupier by reason of a change in the ownership/occupation of the land after the granting of a wayleave

In some cases an existing wayleave will cease to be binding following a change in ownership or occupancy of the land and in such cases, a notice to remove the gas pipeline may be given at any time after the change in ownership or occupancy as provided for by paragraphs 12(1)(c) and 12(2)(c).

3.8 Paragraph 12 refers to the landowner or occupier giving to the licence holder (i.e the licensed gas company) a notice – which must be in writing - requiring him to “remove the gas pipeline from the land”. The Department considers, therefore, that the removal notice needs to make a clear reference to the removal of the gas pipeline or apparatus from the land, rather than simply a request to move or divert the pipeline.

3.9 The Department also considers that the gas company must actually receive the notice to remove (and any notice to terminate) referred to in paragraph 12 of for it to be effective.

3.10 If the gas company does not intend to comply with a notice to remove a gas pipeline paragraph 12(3) provides that, within 3 months from the date of receiving the notice, it must make either an application to the Department for a necessary wayleave or for a vesting order.

3.11 A notice to remove can be withdrawn by a landowner or occupier by writing to the gas company. The gas company will then be able to write to the Department withdrawing its application for a necessary wayleave. The Department in turn, will confirm in writing, that no further action will be taken with the application.

3.12 It should be noted that before the gas company applies to the Department for the grant of a necessary wayleave to retain an existing gas pipeline it is not necessary for it to serve a notice on the owner and/or occupier in accordance with paragraph 10(1)(b) as this only applies to the installation of new gas pipelines.

4. MAKING OF APPLICATIONS FOR NECESSARY WAYLEAVES

4.1 To assist the Department to deal with cases efficiently and as quickly as possible, the following information should be provided by the gas company in its necessary wayleave application:

For all necessary wayleave applications

- (a) (i) where the land is registered (1) a copy of the Land Registry folio (2) the name and address of the person(s) who is/are recorded in the Land Registry as the registered owner (s) and (3) a copy or reproduction map extracted from the Land Registry folio;
 - (ii) where the land is unregistered, evidence satisfactory to the Department to establish the ownership or occupancy of the land in question;
 - (iii) where the landowner is not also the occupier, the name and address of the occupier along with an explanation of the nature of his occupation of the land (if known after reasonable enquiry);
 - (iv) the location of the land by reference to townlands, etc;
 - (v) details of the gas pipeline(s) and apparatus in question, including pipeline diameter and normal and maximum operating pressures; and
 - (vi) a statement as to whether the application is for one or more necessary wayleaves and the number of pipelines covered by each application (see paragraph 4.3 below); and
- (b) a statement of whether the application is to install a new gas pipeline under paragraph 10(1)(a) or to retain an existing pipeline under paragraph 10(2); and

- (c) a map/plan of 1:2500 scale, clearly detailing:
 - (i) where possible, the owner and/or occupier's affected land boundaries;
 - (ii) the existing or proposed gas pipeline(s) and apparatus crossing the land;
 - (iii) any other gas pipeline crossing the land which are not subject to the application; and
 - (iv) the grid reference for the installation.
- (d) where the new pipeline is needed to connect a supply, the name and address of person requesting that supply;
- (e) the planning application reference number to construct the new gas pipeline;
- (f) confirmation that:-
 - (i) at least 21 days notice has been given to the landowner/occupier in accordance with paragraph 10(1)(b) (a copy of the notice should be attached); and an explanation of how the notice was served on the landowner and/or occupier;
 - (ii) where applicable, a statement that personnel of the gas company have met person(s) who identified themselves as the owner(s) and/or occupier(s) of the land in question and informed them about the proposal to construct a new pipeline;
 - (iii) a statement that the land in question is not covered by a dwelling as defined in paragraph 10(10); and

- (iv) a statement that planning permission is not in force for a dwelling to be constructed on the land in question.

- (g) a detailed statement of:-
 - (i) the company's reasons for the proposed installation (or retention) of the gas pipeline along the route in question and why this route is preferred;

 - (ii) any technically feasible alternative routes for the pipeline and associated estimated costs; and

 - (iii) any other relevant information

- (h) copies of any documents (including maps, photographs and plans) the company intends to produce to the enquiry; and

- (i) where it is impracticable to provide copies of any of the documents, a statement of the times and place at which the Department and the owner/occupier and/or his advisers may inspect the documents and where practicable, take copies of them.

- (j) confirmation of which part of paragraph 12(1) applies. That is whether the existing wayleave:-
 - has been determined by the expiration of a period specified in the wayleave;

 - has been terminated by the landowner or occupier in accordance with a term contained in the wayleave; or

 - has ceased to be binding on the landowner or occupier by reason of a change in the ownership or occupation of the land after the granting of a wayleave; and

- (k) if applicable, a copy of any written notice from the landowner or occupier to terminate the wayleave, in accordance with paragraph 12(1)(b) 3; and
- (l) a copy of the written notice from the landowner or occupier to remove the gas pipeline from the land in accordance with paragraph 12(2) of Schedule 3;
- (m) a copy of any relevant extant or previous wayleave agreement(s);
- (n) if unable to locate the previous wayleave agreement for the gas pipeline in question, confirmation of:-
 - (i) whether any record exists of wayleave payments having been made in the past for the gas pipeline;
 - (ii) whether any record exists of a wayleave being secured for the installation of the pipeline; and
 - (iii) how long the pipeline has been installed.

4.2 The above list is not exhaustive. All necessary wayleave applications are different and the Department may request further information in particular cases. The Department will consider any request to relax the requirement for the gas company to submit all information and documents supporting the application together and at the same time.

4.3 The gas company should copy its application and all attachments to the landowner and or occupier and explain why the application has been made. **The letter of application to the Department should confirm that this has been done.**

4.4 **The Department's reference number which is allocated to a necessary wayleave application should be included in all subsequent correspondence on the application.**

5. PROCEDURE TO ASSESS WHETHER TO APPOINT A PERSON TO UNDERTAKE A WAYLEAVE ENQUIRY

- 5.1 The Department will afford the owner of the land in respect of which an application for a necessary wayleave has been made and if different, the occupier of the land an opportunity of being heard by a person appointed by the Department.
- 5.2 If the landowner and if different, the occupier, both decline the opportunity of being heard and choose not to submit objections in writing the Department may decide not to appoint a wayleave officer to undertake a wayleave enquiry.
- 5.3 If, having declined the opportunity to be heard, either the landowner or the occupier submit written objections, the Department will consider those objections and if it has reason to believe it may not be necessary or expedient to install a gas pipeline or to keep a gas pipeline installed on, under or over the land in question, it will appoint a person to undertake a wayleave enquiry.
- 5.4 If the Department considers that it may be necessary or expedient to install a gas pipeline or to keep a gas pipeline installed on, under or over the land in question and that the nature of any of the objections is (i) within the scope of the wayleave enquiry and (ii) requires investigation to ascertain the effects on an individual landowner or occupier's use and enjoyment of their land, it will appoint a wayleave officer to undertake a wayleave enquiry.
- 5.5 If the Department considers the objection(s) raised are either (i) not within the scope of the matters to be determined by a wayleave enquiry or (ii) insufficient to support a decision to refuse consent for a necessary wayleave, it shall notify the landowner and/or occupier that it is minded to grant the necessary wayleave.
- 5.6 If the landowner or occupier objects to the Department's 'minded to grant' consent notice, the landowner or occupier will be invited to make further written representations in support of their original objections.

5.7 Having considered any further representations the Department will decide either to instigate a wayleave enquiry or to grant the necessary wayleave and will inform the landowner/occupier accordingly.

6. PURPOSE AND SCOPE OF WAYLEAVE ENQUIRY

- 6.1 The purpose of a necessary wayleave enquiry is to hear representations as to:-
- (a) why it is necessary, or expedient, for the gas pipeline to cross the land in question; and
 - (b) what the effects are of the gas pipeline on the use and enjoyment of the land.
- 6.2 In scope a necessary wayleave enquiry is focused more on establishing the effect on private land interests rather than matters of a more general nature. This means that there is no right for third parties to participate.
- 6.3 Consequently, information that would be relevant at a wayleave enquiry is site specific, for example, the effect of the intended installation of the gas pipeline on farming (crops and animals), on the use of machinery, or on wild fauna and flora.
- 6.4 As part of the enquiry the independent wayleave officer may also seek from any other relevant source, any further information he requires to assist him to reach firm conclusions and a reasoned recommendation as to whether a necessary wayleave should be granted by the Department.

7. HEARING THE REPRESENTATIONS OF THE LANDOWNER/OCCUPIER AND THE GAS COMPANY

- 7.1 Following receipt of an application from the gas company for a necessary wayleave to install or retain a gas pipeline, the Department will write to the land owner (and if different the occupier) asking them if they prefer to (a) speak to a wayleave officer in person or (b) only make written representations. They will also be asked to provide a short summary of their objections.
- 7.2 If the Department decides to instigate a wayleave enquiry, the landowner (and if different the occupier) will be offered the chance of meeting and speaking to the wayleave officer.
- 7.3 Based on the discussion with, and information supplied by the landowner and/or occupier, the wayleave officer will prepare a written statement of their case.
- 7.4 The wayleave officer will ask the gas company to comment on the landowner's and/or occupier's statement of case and any other issue the wayleave officer considers should be addressed.
- 7.5 The landowner and/ or occupier will be provided with the gas company's response and invited to comment.
- 7.6 If necessary the wayleave officer can ask the gas company to attend the site (which will require the prior permission of the landowner and or occupier) to further discuss the existing or proposed route of the gas pipeline.
- 7.7 The wayleave officer will afford both parties a reasonable opportunity to provide or respond to information or attend meetings and will consider any request to extend deadlines or re-schedule meetings, consulting where necessary, the other party.

- 7.8 In conducting the enquiry and any meeting between the parties, the wayleave officer will operate the guidance procedures flexibly to ensure that all parties have a reasonable opportunity of presenting their case and replying to any point raised.
- 7.9 If at any early stage the wayleave officer believes there is a prospect the parties may be able to reach a voluntary agreement he can suspend the wayleave enquiry to allow the parties an opportunity to negotiate. If agreement is reached all parties must inform the wayleave officer in writing that they do not wish to proceed with the wayleave enquiry.

8. CONVENING A MEETING BETWEEN THE GAS COMPANY AND THE LANDOWNER/OCCUPIER

- 8.1 Having considered the landowner's (and, if different) the occupier's statement of case, the response from the gas company, any further comment from the landowner and/or occupier and any other relevant information received, the wayleave officer will consider whether or not a meeting between the parties would assist in elucidating or clarifying any issue in dispute relevant to the application and within the scope of a wayleave enquiry.
- 8.2 The wayleave officer will advise the landowner and/or occupier and the gas company of his opinion as to whether or not a meeting should be convened.
- 8.3 If the landowner or occupier believes a meeting should be held and the gas company agrees, the wayleave officer will arrange to convene a meeting.
- 8.4 If the gas company believes a meeting should be held and the landowner or occupier agrees the wayleave officer will convene a meeting.
- 8.5 The wayleave officer should issue an agenda to the parties prior to the meeting detailing what, if any, issues he believes need to be discussed. He will include any other matters the landowner and or occupier or the gas company wishes to raise.
- 8.6 Before any meeting commences the wayleave officer should briefly explain the background to the application; the role of the Department; the purpose and scope of a wayleave enquiry; the role of the wayleave officer; his assessment of the issues in dispute and the outstanding issues to be addressed or clarified.
- 8.7 Once the preliminaries have been completed the wayleave officer should then invite the gas company to address each of the issues/questions to be discussed.
- 8.8 This should be followed by an invitation to the land owner and/or occupier to respond.

- 8.9 The wayleave officer may ask any relevant questions of either party aimed at helping to ensure that he is in possession of all the necessary information to enable him to make an informed and balanced recommendation as to whether or not a necessary wayleave should be granted by the Department.
- 8.10 The wayleave officer will chair the meeting and make a summary record of what is discussed and the final positions of the parties.
- 8.11 Before concluding the meeting the wayleave officer will give each party the opportunity to raise any other issue

9. WAYLEAVE OFFICER'S REPORT AND THE DEPARTMENT'S DECISION

- 9.1 After the wayleave enquiry is completed the wayleave officer will be expected to submit a written report to the Department within four weeks.
- 9.2 This report will record and analyse the respective representations and any other relevant information.
- 9.3 In reaching his conclusions and formulating recommendations, the wayleave officer will seek to strike a fair balance between a landowner or occupier's private property rights and the gas company's duty under their licence to take such steps as are reasonably practicable to develop and operate a secure, efficient and economic gas transportation infrastructure. The wayleave officer should also take into account that a landowner or occupier has a statutory right to compensation. The report should reach/provide firm conclusions and a reasoned recommendation as to whether the Department should grant a necessary wayleave for the installation, or retention, of the gas pipeline across the land in question.
- 9.4 The Department will then consider the report, along with any additional information it considers relevant, before reaching its decision on whether to grant a necessary wayleave.
- 9.5 The Department's decision is legally binding on both parties and by virtue of paragraph 10(8), a necessary wayleave which has been granted by the Department shall bind any person who is at any time the owner or occupier of the land.
- 9.6 The aim is that the parties will be notified by the Department of its decision within eight weeks of the wayleave officer completing his final report. This will be in the form of a letter accompanied by a copy of the wayleave officer's report and if the Department consents to granting a necessary wayleave, a copy of the consent.

9.7 The overall process from receipt of an application to notification of the Department's decision will usually take between seven to eight months. However, it is inevitable that, for a variety of reasons, some cases may take longer.

10. COMPENSATION

- 10.1 Although issues raised by either party which relate to the impact on the use and enjoyment of the land may subsequently be subject to a claim for compensation, the wayleave officer has no jurisdiction to address amounts of compensation payments in respect of a necessary wayleave.
- 10.2 In striking a balance between a landowner or occupier's private property rights and the gas company's duty under their licence to take such steps as are reasonably practicable to develop and operate a secure, efficient and economic gas transportation infrastructure, a wayleave officer will take into account that a landowner or occupier has a statutory right to compensation.
- 10.3 The Department has no power under Schedule 3 to the 1996 Order to prescribe financial conditions in any wayleave it may grant or to resolve disputes on the level of compensation.
- 10.4 Any dispute about the amount of compensation is referable to and determinable by the Lands Tribunal of Northern Ireland.

11. COSTS

11.1 There is no provision under Schedule 3 to the 1996 Order for reimbursement of the costs of the parties associated with the processing by the Department of an application for a necessary wayleave.

11.2 Both the landowner and /occupier and the gas company must therefore bear their own costs.

**Department for the Economy
Energy Division**

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