

[AS REPORTED FROM THE COMMERCE AND ENERGY COMMITTEE]

House of Representatives, 22 July 1982.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE HOUSE]

House of Representatives, 6 October 1982.

Words struck out are shown in italics within double bold round brackets, or with double black rule at beginning and after last line; words inserted are shown in roman underlined with a triple rule, or with triple rule before first line and after last line.

Hon. Mr Birch

GAS

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A BILL INTITULED

An Act to make better provision for the regulation of the manufacture, supply, and use of gas in New Zealand

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows: 5

1. Short Title and commencement—(1) This Act may be cited as the Gas Act 1982.

(2) Subject to subsection (3) of this section this Act shall come into force on the 1st day of (October 1982) February 10 1983.

New

<p>(3) <u>Section 15</u> of this Act shall come into force on the 1st day of May 1983.</p>
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2. Interpretation—(1) In this Act, unless the context otherwise requires,—

5 “Area”, in relation to a franchise holder or to an application for a franchise, means a continuous area in which the holder is authorised, or the applicant wishes to be authorised, to supply gas under the franchise:

10 “Biogas” means the mixture of gases that is produced by anaerobic microbial decomposition of organic matter and that principally comprises methane and carbon dioxide together with lesser amounts of hydrogen sulphide, water vapour, or other gases:

15 “Chief Inspecting Engineer” means the person appointed to that office under section 4 of this Act; and includes any person who is for the time being carrying out the duties and functions of the Chief Inspecting Engineer:

20 “Consumer” means any person (other than a franchise holder or the Corporation) who is supplied, or who applies to be supplied, with gas; and, in relation to any place that is supplied, or in respect of which an application is made to be supplied, with gas, includes the owner or occupier of the place:

“Container” does not include a pipe:

25 “Corporation” means the Natural Gas Corporation of New Zealand Limited:

“Fittings” means every thing used, or designed or intended for use, in or in connection with the supply, distribution, (or consumption) compression, or use of

30 gas:

“Franchise” means a franchise granted under Part II of this Act *(to supply gas through pipes within any area)*:

35 “Franchise holder” or “holder” means any person holding a franchise; and includes the Corporation to the extent that it holds a franchise:

“Gas” means any fuel that is (delivered) supplied through pipes or in containers and is a gas at a temperature of 15°C and an absolute pressure of (101.3) 101.325

kilopascals; and includes—

40 (a) Biogas, coal gas, liquefied petroleum gas, natural gas, oil gas, producer gas, refinery gas, reformed natural gas, and water gas:

(b) Any gaseous substance that the Governor-General declares by Order in Council to be a gas for the purposes of this Act:

(c) Any mixture of gases:

Struck Out

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“Gas appliance” means an appliance (including associated fittings) or a gas installation that uses gas as a fuel at a gauge pressure not exceeding 7 kilopascals:

“Gas installation” means an installation, including a gas appliance, that is connected or is intended to be connected with any source from which gas is supplied; and includes all associated fittings:

“Gas supplier” means any person who sells to any other person any gas for the supply of which a franchise is required; and, to the extent that a franchise holder or the Corporation sells such gas, includes that franchise holder and the Corporation:

“Local authority” means any local authority as defined in the Local Government Act 1974:

“Metal working” means the working of any metal by any process of flame cutting, welding, brazing, or silver soldering, involving the use of any gas:

“Meter” means an instrument that is designed to measure gas supplied through it:

“Minister” means the Minister of Energy:

“Pipe” includes associated fittings:

“Place” means—

Struck Out

(a) Any house, shop, factory, or other land, premises, or building, or any part of a building, that is separately occupied:

New

(a) Any land, house, shop, factory, premises, building, or any part of a building that is separately occupied:

(b) Any vessel within any harbour or inland waters:

(c) Any aircraft, hovercraft, or vehicle:

5 “Prescribed” means prescribed by or under regulations made under this Act:

“Public notice” means a notice published twice in any newspaper circulating in the locality to which the act, matter, or thing required to be publicly notified relates or refers or in which it arises, with an interval
10 of not less than 5 nor more than 10 days between each publication:

“Road” has the same meaning as it has in section 315 of the Local Government Act 1974; and includes a road under the jurisdiction of any local authority:

15 “Secretary” means the Secretary for Energy appointed pursuant to section 5 of the Ministry of Energy Act 1977:

20 “Territorial authority” means any territorial authority as defined in section 2 of the Local Government Act 1974.

New

“Working day” means any day of the week other than—

25 (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s birthday, and Waitangi Day; and

(b) A day in the period commencing with the 25th day of December in any year and ending with the 15th day of January in the following year.

30 (2) Any notice required or authorised by this Act to be served on any person shall be delivered to that person, and may be delivered to him either personally or by posting it by registered letter addressed to that person at his last known place of abode or business in New Zealand. A notice so posted shall be deemed to have been served at the time when the
35 registered letter would in the ordinary course of post be delivered.

3. Application of Act—(1) Subject to subsection (2) of this section, and except as expressly provided elsewhere in this Act or in any other Act, this Act shall apply to every
40 franchise holder, and every gas supplier and every consumer.

(2) Nothing in this Act applies to—

(a) Any gas in circumstances in which any of the following Acts, or any regulations made under any of those Acts, apply:

(i) The Weights and Measures Act 1925, in relation to *(liquid)* liquefied petroleum gas in liquid form:

- (ii) The Petroleum Act 1937:
- (iii) The Boilers, Lifts, and Cranes Act 1950: 5
- (iv) The Shipping and Seamen Act 1952:
- (v) The Transport Act 1962:
- (vi) The Dangerous Goods Act 1974:

Struck Out

- (vii) The Town and Country Planning Act 1977: 10
 (b) Any gas used for any purpose other than the provision of heating, lighting, or motive or other power:

New

- (b) Any gas used as a feedstock, excluding any gas being reformed for use as a fuel: 15

- (c) Any gas appliance used in metal working and fuelled exclusively by acetylene or any prescribed gas:
- (d) Any gas appliance designed to be fuelled exclusively from a container not exceeding 120 millilitres in capacity: 20
- (e) Any gas in containers:
- (f) A pipeline (including any gate station) that is subject to Part II of the Petroleum Act 1937.

New

- (3) This Act shall bind the Crown. 25

PART I

ADMINISTRATION

4. Appointment of officers—(1) For the purposes of this Act, there shall from time to time be appointed, under the State Services Act 1962,— 30

- (a) A Chief Inspecting Engineer; and

(b) Such other officers as may be necessary for the proper administration of this Act, whether such appointments are of a permanent, temporary, or casual nature.

5 (2) Any such office may be held concurrently with any other office in the Public Service.

5. Duties of Chief Inspecting Engineer—The duties of the Chief Inspecting Engineer shall be generally—

- 10 (a) To carry out the requirements of this Act and of any regulations made under this Act in relation to his office:
- (b) To advise the Secretary on standards to be met in respect of fittings, gas appliances, gas installations, meters, and gas that is to be supplied to or used by franchise holders, gas suppliers, and consumers:
- 15 (c) To carry out such enquiries as may be necessary to determine whether or not any person is supplying gas in accordance with this Act and any regulations made under it:
- 20 (d) To take all such lawful steps as may be necessary to ensure the safe supply and utilisation of gas.

6. Delegation of powers by Chief Inspecting Engineer—(1) The Chief Inspecting Engineer may from time to time, in writing under his hand, delegate to any officer

25 any of his duties and powers, except this power of delegation.

(2) He may make any such delegation on such terms and subject to such conditions as he thinks fit.

(3) Subject to any such terms and conditions and to any instructions given by the Chief Inspecting Engineer, the

30 person to whom any duty or power is delegated under this section may perform that duty or exercise that power in the same manner and to the same effect as if it had been imposed or conferred on him directly by this Act.

(4) Any delegation under this section may be revoked at

35 any time.

(5) The delegation of any duty or power under this section shall not prevent the performance of that duty or the exercise of that power by the Chief Inspecting Engineer.

(6) Every person purporting to act pursuant to a delegation

40 under this section shall be presumed to be acting in accordance with the terms of the delegation, in the absence of proof to the contrary.

7. Certificates of appointment—(1) Every officer appointed for the purposes of this Act shall, on his appointment, be issued with a certificate of his appointment signed by the Secretary.

(2) Every such certificate shall be prima facie evidence of the appointment to which it relates, and of the identity of the person producing it. 5

(3) Whenever any officer enters or seeks to enter any place in the exercise of any of his powers under this Act, he shall, on demand by the owner or occupier or other person for the time being in charge of the place, produce his certificate of appointment for inspection by that person. 10

8. Inspection of distribution systems—(1) Pursuant to his duties under this Act, the Chief Inspecting Engineer may at any reasonable time inspect the whole or any part of any distribution system (including any associated works) under the control of and used by any franchise holder or gas supplier for the supply of gas. 15

New

(1A) For the purpose of inspecting any distribution system (including any associated works) as provided by subsection (1) of this section, the Chief Inspecting Engineer may enter and re-enter any place. 20

(2) Before carrying out an inspection under this section, the Chief Inspecting Engineer shall give to the franchise holder or gas supplier and to the occupier of any land affected reasonable notice of his intention to do so. 25

(3) Where he has entered any place under subsection ~~((1))~~(1A) of this section, the Chief Inspecting Engineer may— 30

- (a) Inspect any plant, equipment, or article forming part of the distribution system:
- (b) Test any substance that he reasonably believes to be gas; test any meter; and carry out any other test that he reasonably considers necessary or desirable for the purposes of this Act: 35
- (c) Without limiting paragraph (b) of this subsection, take (without payment) samples of any substance that he reasonably believes to be gas, for the purposes of examination and testing: 40
- (d) Require in writing any person whom he reasonably believes to be presently in charge of any place, or of any plant, equipment, or article in the place, to take

any specified action in respect of that place, plant, equipment, or article that the Chief Inspecting Engineer reasonably believes is necessary to render that place, plant, equipment, or article safe:

- 5 (e) Require the franchise holder or gas supplier to produce any book, certificate, list, notice, record, or other document required by this Act or by any regulation made under this Act to be kept by that franchise holder or gas supplier, and examine and make
10 copies of or take extracts from any such document.

9. Report to be compiled on test—Where the Chief Inspecting Engineer carries out any test under section 8 of this Act, he shall—

- (a) Compile a written report of the results of the test; and
15 (b) Give a copy of the report to—
 (i) The person whom he reasonably believed to be in charge of the place in which the test was carried out or from which any substance or article was taken for testing; and
20 (ii) The owner or occupier of the place (where he is not the person referred to in subparagraph (i) of this (paragraph) paragraph); and

New

- 25 (iii) The franchise holder or gas supplier concerned (where he is not the person referred to in subparagraph (i) or subparagraph (ii) of this paragraph).

10. Special powers of Chief Inspecting Engineer—

- 30 (1) The Chief Inspecting Engineer may at any time, by notice in writing, require any franchise holder or gas supplier to take apart or dismantle any item of plant or equipment to facilitate or assist an inspection for the purposes of this Act.

- (2) The Chief Inspecting Engineer may at any time, by notice in writing, require a franchise holder or gas supplier to
35 remove and replace any meter, and to deliver the replaced meter for inspection and testing.

(3) Where the Chief Inspecting Engineer believes on reasonable grounds in respect of any place—

- 40 (a) That there is a danger or potential danger to the safety of any persons or property arising directly or indirectly from the presence or escape of any gas; or

(b) That, because of anything done or omitted to be done, or intended to be done or not to be done, by any person, there would be a danger or potential danger to any persons or property should any gas be present or escape,—

he may do all such things, and require any person to refrain from doing all such things, as the Chief Inspecting Engineer considers necessary to remove or minimise the danger or potential danger.

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New

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10A. Objections to Chief Inspecting Engineer's requirements—(1) Where the Chief Inspecting Engineer has given a notice under section 8 (3) (d) or section 10 (1) or section 10 (3) of this Act, he shall forward a copy of the notice or details of the requirement to the Secretary, together with a written report stating the reasons for giving the notice or making the requirement.

(2) Within 21 days after receiving any notice or being made subject to any requirement referred to in subsection (1) of this section, the person affected by that notice or requirement may object thereto by lodging a written notice of the objection, stating the grounds of the objection, with the Registrar of the District Court nearest to the place where the notice was given or the requirement made, or, with the consent of the Secretary, with the Registrar of any other District Court.

(3) A copy of the notice of objection shall be served on the Secretary and on the Chief Inspecting Engineer, either before or immediately after it is lodged with the Registrar.

(4) The Registrar of the Court shall give notice of the time and place fixed for the hearing of the objection to the objector, the Secretary, and the Chief Inspecting Engineer.

(5) The objector, the Secretary, and the Chief Inspecting Engineer, either personally or by their counsel shall be entitled to be present and be heard.

(6) On hearing the objection, the Court may by order confirm, reverse, or modify the notice or requirement; and the order shall be final and binding on all parties.

(7) Until an order is made by a District Court under subsection (6) of this section, the notice or requirement shall be suspended pending the hearing or withdrawal of the objection, or the withdrawal of the notice or requirement, unless the Chief Inspecting Engineer considers the situation to be one involving immediate danger to life or property and advises the person to whom the notice is given or of whom the requirement is made accordingly.

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New

(8) Where the Chief Inspecting Engineer advises the person to whom he gives any notice or of whom he makes any requirement referred to in subsection (1) of this section that
5 he considers the situation to be one involving immediate danger to life or property, that person shall immediately take active steps to comply with that notice or requirement.

(9) Every person who fails to comply immediately with any notice or requirement to which subsection (8) of this section
10 applies commits an offence and shall be liable to a fine not exceeding \$500 for every day or part of a day that such failure continues.

(10) Without limiting the liability of any person to be convicted of an offence against subsection (9) of this section
15 the High Court shall have jurisdiction to restrain any breach or threatened breach of subsection (8) by injunction at the instance of the Secretary or Chief Inspecting Engineer, and to make such order in the matter as to costs and otherwise as it thinks fit.

20 (11) No person shall be precluded by any contract or agreement from doing or refraining from doing such acts as may be necessary to comply with the provisions of this section, or be liable under any contract or agreement to any penalty or forfeiture for doing or refraining from doing any
25 such act.

10B. Assessors—(1) Where any objection has been lodged under section 10A (2) of this Act, the Secretary, or the Chief Inspecting Engineer or the objector may ask for the objection to be heard with the assistance of 2 assessors, one to be
30 appointed by the Secretary and the other by the objector.

(2) No person shall be appointed to act as an assessor unless he has special skill or knowledge in relation to the gas industry relevant to the particular matter to be considered by the Court.

35 (3) There shall be paid, from the Consolidated Account out of money appropriated by Parliament for the purpose, to any assessors appointed under this section remuneration by way of fees, salary or allowances, and travelling allowances and expenses in accordance with the Fees and Travelling
40 Allowances Act 1951; and the provisions of that Act shall apply accordingly as if the assessors were members of a statutory Board within the meaning of that Act.

10c. Costs incurred by Chief Inspecting Engineer—All costs incurred by the Chief Inspecting Engineer, or which
45 may be awarded against him in any proceedings under this

Act, shall be met from the Consolidated Account, out of money appropriated by Parliament for the purpose; and in no case shall the Chief Inspecting Engineer be personally liable for such costs.

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11. Notification and investigation of accidents—

(1) This section applies in respect of every accident that—

(a) Is caused wholly or partly by, or involves or affects, any gas, or involves or affects the production, supply, or distribution of any gas; and

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(b) Results in—

(i) Serious injury to or the death of any person; or

(ii) Damage to any place that renders that place unusable for the purpose for which it was used or designed to be used prior to that accident.

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(2) For the purposes of subsection (1) of this section, the expression “serious injury” means any injury which is likely to incapacitate the person suffering the injury for 48 hours or more.

(3) Where any accident to which this section applies occurs in any place, the appropriate franchise holder in the case of an accident involving or affecting gas supplied under the franchise, and the occupier of that place in all other cases, shall notify the Chief Inspecting Engineer of the particulars of the accident forthwith on becoming aware of the accident.

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(4) No person shall interfere in any way with the scene of any accident to which this section applies without the permission of the Chief Inspecting Engineer or (if he or any other officer acting under his delegated authority is not present) a member of the Police, except to the extent that that person believes is necessary to avoid or minimise further injury or damage.

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(5) Where any person does interfere in any way with the scene of any accident to which this section applies, he shall notify the Chief Inspecting Engineer of the action he has taken when that officer conducts an inquiry into the accident under subsection (6) of this section.

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(6) The Chief Inspecting Engineer shall conduct an inquiry into every accident to which this section applies to establish the cause of the accident, and shall furnish a written report of his findings to the Secretary who shall make copies of the report available on request to interested parties.

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(7) Subject to the proviso to section 13 (b) of this Act, the Chief Inspecting Engineer may, for the purpose of any inquiry under this section, require any person to supply to him all such information as that person may have of relevance to the inquiry.

12. Assistance to Chief Inspecting Engineer—Where the Chief Inspecting Engineer is performing any duty or exercising any power in respect of any place, or any plant, equipment, or article in any place, the franchise holder, gas supplier, or other owner or occupier of the place, and any other person who is for the time being in charge of the place, shall provide all such facilities and assistance as the Chief Inspecting Engineer may reasonably require of him.

13. Obstructing Chief Inspecting Engineer—Every person commits an offence against this Act who—

- (a) Intentionally obstructs the Chief Inspecting Engineer or any officer acting under his delegated authority who is lawfully carrying out his duties under this Act:
- (b) Refuses or fails without reasonable excuse—
- (i) To produce any book, certificate, list, notice, record, or other document when required to do so by the Chief Inspecting Engineer for the purposes of this Act; or
 - (ii) To allow the Chief Inspecting Engineer to examine or make copies of or take extracts from any such document; or
 - (iii) To supply any information required of him by the Chief Inspecting Engineer; or
 - (iv) To comply with any other lawful order or requisition given or made by the Chief Inspecting Engineer:

Provided that that person shall have the right to refuse to reply to any question on the grounds that the answer might tend to incriminate that person:

- (c) Intentionally damages or interferes with any equipment, apparatus, or article used by, or supplied for the use or in the possession of, the Chief Inspecting Engineer or any officer acting under his delegated authority for the purposes of this Act:
- (d) Fails without reasonable excuse to report any accident to which section 11 of this Act applies when required to do so by subsection (3) of that section, or interferes in any way with the scene of any such accident otherwise than in accordance with subsection (4) of that section, or, having interfered

in any such scene in accordance with that subsection, fails without reasonable excuse to notify the Chief Inspecting Engineer of the steps he has taken as required by subsection (5) of that section.

14. Protection of persons acting under authority of Act— 5
Subject to section 57 of this Act, no person who does

any act in good faith and with reasonable care in pursuance or intended pursuance of any of the duties and powers imposed or conferred on him by or under this Act shall be under any civil or criminal liability in respect of the act. 10

PART II

FRANCHISES

15. Franchise required for gas undertaking—

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(1) Subject to this section, no person shall supply gas (other than biogas) through pipes to any consumer unless he is the holder of a franchise or is otherwise authorised under this Act to do so. 15

(2) Subsection (1) of this section shall not apply to the sale of gas as a transport fuel. 20

(3) The Governor-General may from time to time, by Order in Council, authorise any person named in the order to supply any specified type of gas through pipes to any specified consumer in any specified area for any specified purpose.

New

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(1) Subject to this section, no person shall—

(a) Supply gas (other than biogas or liquefied petroleum gas) through pipes to any consumer; or

(b) Supply liquefied petroleum gas through any pipe conveying gas outside his property for supply to 5 or more consumers,— 30

unless he is the holder of a franchise or is otherwise authorised under this Act to do so.

(2) Subsection (1) of this section shall not apply to the supply of gas— 35

(a) As a transport fuel from a vehicle refuelling station; or

(b) To a vehicle refuelling station where the gas is brought to the station in containers.

(4) Every person who contravenes subsection (1) of this section commits an offence against this Act.

16. Rights of specified existing gas distributors—

(1) On the date of the commencement of this Act, every gas distributor named in the first column of the First Schedule to this Act shall be deemed to be a franchise holder authorised to supply gas in the area (in this section referred to as the original area) in which the distributor was, immediately before that date, so authorised by or under the enactment specified in respect of that distributor in the second column of the First Schedule or any amendment thereto, as varied by any existing agreement with another gas distributor affecting the boundaries of that original area.

(2) On the date of the commencement of this Act any gas distributor who, immediately before the commencement of this Act was authorised by an Order in Council made under section 20B of the Gas Industry Act 1958 to supply gas in any area, shall be deemed to be the franchise holder authorised to supply gas in the area specified in the order:

New

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Provided that this subsection shall not apply to any area to which subsection (1) of this section applies.

(2A) The Minister shall, within 6 months after the commencement of this Act, by notice in the *Gazette* publish a description of the areas of the franchises deemed to be held under this section.

(3) Where any gas distributor named in the first column of the First Schedule to this Act was, immediately before the date of the commencement of this Act, supplying gas or had a contractual obligation to supply gas in any area (in this section referred to as the additional area), other than the original area, the distributor may, within one month after that date or within such further time as the Minister may allow, apply to the Minister for a franchise for the additional area.

(4) Where the gas distributor does so apply, the distributor shall be deemed for the purposes of this Act to be the holder of a franchise for the additional area until the application is determined.

(5) Subsection (2) of section 20 of this Act shall apply to every application under this section, but it shall not be necessary in respect of any such application to comply with the other provisions of that section or with section 21 of this Act.

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Struck Out

17. Rights of Corporation—(1) Within one month after the date of the commencement of this Act, or within such further time as the Minister may allow, the Corporation may apply to the Minister for a franchise for any area in which it was, immediately before that date, supplying gas. 10

(2) Where the Corporation does so apply, it shall be deemed for the purposes of this Act to be the holder of a franchise for each area to which the application relates until the application is determined. 15

(3) Subsection (2) of section 20 of this Act shall apply to every application under this section, but it shall not be necessary in respect of any such application to comply with the other provisions of that section or with section 21 of this Act. 20

18. Rights of other existing gas distributors—

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(1) Where any gas distributor (other than one named in the first column of the First Schedule to this Act or in any Order in Council made under section 20B of the Gas Industry Act 1908, or the Corporation) was, immediately before the date of the commencement of this Act, supplying gas in any area, the distributor may, within one month after that date or within such further time as the Minister may allow, apply to the Minister for a franchise for that area. 25
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New

(1) Where any distributor (other than one named in the first column of the First Schedule to this Act) was, immediately before the date of the commencement of this Act, supplying gas or had a contractual obligation to supply gas in any area otherwise than pursuant to an Order in Council under section 20B of the Gas Industry Act 1958, the distributor may, within one month of that date or within such further time as the Minister may allow, apply to the Minister for a franchise for that area. 35
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(2) Where a gas distributor does so apply, the distributor shall be deemed for the purposes of this Act to be the holder of a franchise for the area to which the application relates until the application is determined.

5 (3) Subsection (2) of section 20 of this Act shall apply to every application under this section, but it shall not be necessary in respect of any such application to comply with the other provisions of that section or with section 21 of this Act.

10 **19. Only one franchise for each area**—(1) Except as provided in this section, no more than one franchise shall be granted for any particular area.

(2) The fact that the Corporation holds a franchise for any area shall not preclude any other person from applying for
15 and being granted a franchise for that area or any part of that area.

(3) Where any person is granted a franchise in respect of an area for which the Corporation holds a franchise, the Corporation's franchise shall be deemed to be revoked, and
20 the Minister shall notify the Corporation accordingly.

Struck Out

(4) The fact that any person holds a franchise for any area shall not preclude any other person from applying for and being granted authority to supply any named consumer in
25 that area.

(5) Without limiting subsection (4) of this section, the fact that any person holds a franchise for any area shall not preclude the Corporation, with the consent of the Minister, from agreeing to supply and supplying gas to any named
30 consumer if the quantity of gas required by that consumer is not less than 500,000 gigajoules per annum.

(6) The Minister may at any time revoke any consent given under subsection (5) of this section, and section 27 shall then apply to that revocation of consent in the same manner, with
35 any necessary modifications, as it applies to the revocation of a franchise.

(4) The fact that any person holds a franchise for any area shall not preclude any other person from applying to the Minister for an authority to supply gas to any consumer at a particular place in that area, or to supply a particular part of that area. 5

(5) The Minister shall grant an application for an authority under subsection (4) of this section only where he is satisfied—

(a) That the applicant and the franchise holder for that area have agreed in writing that the applicant may supply a consumer at that place or a particular part of the area; or 10

(b) That the requirement for gas of the consumer at that place or the requirements for gas of the consumers in the particular part of the area are beyond the ability of the franchise holder for that area to supply; or 15

(c) That the franchise holder for that area has refused to supply the consumer at that place or that particular part of the area; or 20

(d) That the franchise holder for that area has failed to take all reasonable steps to supply the consumer at that place or that particular part of the area.

(6) The holder of an authority under this section shall for the purposes of this Act be deemed to be a franchise holder. 25

20. Applications for franchises—(1) Subject to this section and sections 21 and 25 of this Act, an application may be made by any person or local authority for a franchise or an increase in the area of an existing franchise in respect of— 30

(a) An area for which no franchise exists; or

(b) An area where the existing franchise holder is the Corporation,—

where no other application affecting the same area or any part thereof is under consideration by the Minister. 35

(2) Every application shall be—

(a) Made in the prescribed form; and

(b) Accompanied by a proposed capital works programme and the prescribed particulars; and

(c) Accompanied by the prescribed fee. 40

(3) Except where the applicant is a regional council or united council (within the meaning of the Local Government Act 1974), every such application shall be referred by the Minister to the appropriate regional or united council for its
5 recommendation:

Provided that where the area to which the application relates is not included in a region (within the meaning of that Act), the application shall be referred to every territorial authority whose district comprises the whole or part of that
10 area.

Struck Out

(4) No regional council or united council shall make any recommendation on an application under this section without first consulting with the regional planning energy committee
15 or, where there is no such committee, with every franchise holder or electrical supply authority supplying or proposing to supply gas within any part of the region and, if the council thinks it appropriate, with any territorial authority whose district adjoins the region.

20 (5) If no recommendations are received by the Minister under subsection (3) of this section within 2 months of the date of referral or such further time as the Minister may allow, the Minister may proceed to grant the franchise under section 22 of this Act.

25

New

(4) Any application pursuant to subsection (1) (b) of this section shall be referred by the Minister to the Corporation and any neighbouring franchise holders for their comments.

30 (5) Upon receipt by the Minister of the recommendations under subsection (3) of this section and, where subsection (4) of this section applies, the comments and representations under that subsection, or if no such recommendations, comments or representations are received by the Minister within 2 months of the date of referral or such further time as
35 the Minister may allow, the Minister may proceed to consider the application and any further applications made under section 21 of this Act, under subsections (2), (3), and (4) of section 22 of this Act.

21. Public notice and counter proposals—(1) Every applicant shall cause public notice of the application to be given.

(2) Every such notice shall—

- (a) Be in the prescribed form and signed by or on behalf of the applicant; and 5
- (b) State the nature of the application, the area to which it relates (in this section referred to as the advertised area), and such further particulars as the Minister may require; and 10
- (c) State the date by which any person who wishes to apply for a franchise for the advertised area is required by subsection (3) of this section to make an application to the Minister. 15

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(3) Within 30 days after the last publication of a notice under subsection (1) of this section, any person may apply to the Minister for a franchise in respect of the whole or any part of the advertised area.

New

(3) Within 20 working days after the last publication of a notice under subsection (1) of this section, any person may give notice in writing to the Minister of his intention to apply for a franchise in respect of the whole or any part of the advertised area. Every such notice shall be accompanied by the prescribed application fee. 25

(3A) Within 65 working days after the last publication of a notice under subsection (1) of this section, any person who has given notice to the Minister under subsection (3) of this section may apply to the Minister for a franchise in respect of the whole or any part of the advertised area. 30

(3B) If, after the period specified in subsection (3A) of this section, no application has been received from a person who gave notice under subsection (3) of this section, that person shall forfeit the application fee sent with the notice. 35

(4) Subsections (2) to (5) of section 20 of this Act shall apply to every application under subsection ~~((3))~~ (3A) of this section, but, unless the Minister otherwise requires, it shall not be necessary for the applicant to give public notice of the application under subsection (1) of this section. 40

22. Grant of franchises—(1) The Minister shall grant every application made to him under section 16 (3) (or section 17 (1)) or section 18 (1) of this Act if he is satisfied that the applicant was, immediately before the commencement of this Act, supplying gas or had a contractual obligation to supply gas in the area to which the application relates.

(2) In every other case, the Minister shall determine whether or not to grant the application, having regard to—

- 10 (a) The policy of the Government in relation to the effective and economic use of the various forms of energy in the national interest; and
- (b) The needs of all consumers and potential consumers of the area; and
- 15 (c) The likelihood of the applicant being able, having regard to the applicant's expertise and resources, to provide within a reasonable time a continuous, reliable, and economic supply of gas throughout the area to which the application relates; and

New

- 20 (ca) In the case of an application under section 20 (1) (b) of this Act in respect of only part of an area for which the Corporation has a franchise, the economic viability of supplying gas to all or any part of that area which is not included in the application;
- 25 and

(d) Such other matters as the Minister considers relevant.

(3) The Minister shall not be obliged to grant any application under subsection (2) of this section.

30 (4) When the Minister has determined whether or not to grant an application, he shall notify the applicant and other interested parties of his decision and the reasons for it.

(5) When granting a franchise to the Corporation the Minister may nominate a period during which he will not grant another franchise in respect of all or part of the franchise area held by the Corporation. 5

(6) Within 6 months after the expiry of the period nominated pursuant to subsection (5) of this section, and of any subsequent periods nominated pursuant to this subsection, the Minister may either grant another franchise for all or part of the franchise area held by the Corporation or 10 nominate a further period during which he will not grant a franchise for all or part of the franchise area, or the remaining part of the franchise area held by the Corporation.

(7) The Minister shall, within one month after the grant of any franchise under this section, by notice in the *Gazette* 15 publish a description of the area of that franchise.

23. Franchise subject to proper capital works programme—It shall be a condition of every franchise that the holder shall diligently and continuously carry out a capital works programme in accordance with good trade practice to 20 provide the widest practicable availability of gas throughout the area to which the franchise relates at the earliest practicable time.

24. Powers of Minister to ensure satisfactory progress by franchise holder—(1) The Minister may from time to 25 time, by notice in writing, require a franchise holder to supply such information as the Minister may require for the purpose of satisfying himself that the holder is complying with the condition prescribed by section 23 of this Act.

(2) If at any time the Minister (whether or not he has 30 requested or received any information under subsection (1) of this section) is not satisfied that the franchise holder is complying with that condition, he may, by notice in writing, require the holder within such period (being not less than one month after the date on which the notice is given to the 35 holder) as may be specified in the notice, to show cause why the Minister should not serve on the holder a work notice under subsection (3) of this section.

(3) If, in any case to which subsection (2) of this section applies, the Minister, within the period specified in the notice 40 given under that subsection, is not satisfied that the franchise holder is complying with the condition prescribed by section

23 of this Act, the Minister may serve on the holder a work notice requiring the holder to do all such things as are necessary to comply with that condition.

25. In case of continuing default by franchise holder, Minister may call for other applications—(1) If, in any case to which subsection (3) of section 24 of this Act applies, a franchise holder fails to comply within a reasonable time with the requirements of a work notice given to him under that subsection, the Minister may, by notice in writing, require the holder, within such period (being not less than one month after the date on which the notice is given to the holder) as may be specified in the notice, to show cause why the Minister should not call for applications for a new franchise in respect of the whole or any part of the area to which the *(original)* franchise relates.

(2) If, in any case to which subsection (1) of this section applies, the Minister is not satisfied, within the period specified in the notice given under that subsection, that the failure of the franchise holder to comply with the requirements of the work notice is excusable and that the franchise holder is *(able and willing to comply with those requirements within a reasonable time)* willing and will within a reasonable time be able to comply with those requirements, the Minister may give notice to the *(original)* franchise holder that he intends to call for applications for a new franchise in respect of the whole or any part of the area to which the *(original)* franchise relates and to revoke the *(original)* franchise accordingly.

(3) The *(original)* franchise holder may, within 21 days of the receipt of the notice under subsection (2) of this section, apply to the Administrative Division of the High Court under section 26 of this Act, and, if so, shall notify the Minister accordingly.

(4) The Minister shall not call for applications for a new franchise in respect of the whole or any part of the area to which the *(original)* franchise relates or revoke the *(original)* franchise—

(a) Before the time allowed for an application to the High Court under subsection (3) of this section has expired; and

(b) Where such application has been made to the High Court, before the decision of the Court has been received pursuant to section 26 of this Act.

(5) Subject to subsection (3) of this section and any order of the Court under section 26 of this Act, after the Minister has given notice to the franchise holder under subsection (2) of this section, the Minister may give public notice regarding applications for a new franchise in respect of the whole or, as the case may be, part of the area to which the *(original)* franchise relates, and applications may be made in respect thereof pursuant to sections 20 and 21 of this Act. 5

(6) Where the Minister grants a new franchise pursuant to this section he shall revoke the franchise of the *(original)* franchise holder or, where the new franchise is granted in respect of a part of the *(original)* franchise, amend the *(original)* franchise by excluding that part. 10

26. Application to Administrative Division of High Court to prevent exercise of power of Minister to revoke franchise— 15

(1) Every application made pursuant to section 25 (3) of this Act shall be heard and determined by the Administrative Division of the High Court; and such application shall be limited to the question whether the failure of the applicant to comply with the requirements of the work notice is excusable and whether the applicant is *(able and willing to comply with those requirements within a reasonable time)* willing and will within a reasonable time from the date of the decision of the Court be able to comply with those requirements and, after hearing all the evidence, the Court shall make an order accordingly. 20 25

New

(2) The provisions of section 144 of the Summary Proceedings Act 1957 (which relate to rights of appeal) shall apply in respect of every determination of the High Court under subsection (1) of this Act as if the determination were made under section 107 of the Summary Proceedings Act 1957. 30

27. Transfer of assets upon cancellation of franchise—

(1) ((If the Minister)) This section shall apply in any case where the Minister— 35

(a) Grants a franchise in respect of an area for which the Corporation holds a franchise, and the Corporation's *(original)* previous franchise in respect of that area is revoked under section 19 (3) of this Act; or 40

(b) Revokes a franchise under section 25 of this Act and grants a new franchise for the whole or any part of the area to which the *(original)* previous franchise ((relates,—)) relates.

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5

he may, if requested to do so by the holder of the original franchise (in this section referred to as the outgoing owner), make it a condition of the new franchise that the holder of the new franchise (in this section referred to as the incoming

10 owner) acquire from the outgoing owner the whole or any part of the assets (as determined by the Minister) owned and used or intended to be used by the outgoing owner for the supply of gas pursuant to the original franchise before its revocation.

Struck Out

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New

he shall, if requested to do so by the holder of the previous franchise (in this section referred to as the outgoing owner) make it a condition of the new franchise that the holder of the

20 new franchise (in this section referred to as the incoming owner) acquires from the outgoing owner the whole or any part of the assets owned or used or intended to be used by the outgoing owner for the supply of gas pursuant to the franchise before its revocation.

25 (2) All contracts for the supply of gas by the outgoing owner shall be taken over and be enforceable by the incoming owner.

New

(2) All contracts for the supply of gas by the holder of the

30 previous franchise (in this section referred to as the outgoing owner) shall be taken over and be enforceable by the holder of the new franchise (in this section referred to as the incoming owner).

Struck Out

(3) The price to be paid by the incoming owner to the outgoing owner for any assets under subsection (1) of this section shall be determined by agreement between the parties or, if they fail to agree by arbitration under the Arbitration Act 1908. 5

New

(3) The assets to be acquired by the incoming owner from the outgoing owner under subsection (1) of this section and the price to be paid for those assets shall be determined by 10 agreement between the parties or, if they fail to agree, by arbitration under the Arbitration Act 1908.

(4) In ascertaining the price to be paid under subsection (3) of this section, due regard shall be had for the costs incurred in establishing the franchise of the outgoing owner, 15 the likely future profits from the franchise given existing contractual pricing arrangements, and a reasonable rate of return on the assets for the incoming owner.

28. Exclusion of part of area of franchise—The Minister may at any time, at the request or with the consent 20 of the holder of any franchise and subject to such conditions as the Minister may impose, vary the franchise by excluding any part of the area to which the franchise then relates.

29. Holder not to dispose of franchise without Minister's consent—(1) No holder of a franchise shall sell or 25 otherwise dispose of the franchise without the prior written consent of the Minister.

(2) Any sale or other disposition in contravention of subsection (1) of this section shall be void.

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(3) The fact that a contract is declared void under subsection (2) of this section shall not make that contract an illegal contract.

(4) For the purposes of this section, where the franchise holder is a company, any sale or other disposition of shares 35 whereby the effective control of the company is changed shall be deemed to be a disposal of the franchise held by the company.

New

(3) Except where the proposed new holder of the franchise is a regional council or united council (within the meaning of the Local Government Act 1974), every application under subsection (1) of this section shall be referred by the Minister to the appropriate regional or united council for its recommendation:

Provided that where the area to which the application relates is not included in a region (within the meaning of that Act), the application shall be referred to every territorial authority whose district comprises the whole or part of that area.

(4) Upon receipt by the Minister of the recommendations under subsection (3) of this section or, if no recommendations are received by the Minister under that subsection within 2 months of the date of referral or such further time as the Minister may allow, the Minister may proceed to grant or refuse the application.

30. Expiry of franchise on cessation of supply of gas—

(1) Where a franchise holder ceases to supply gas in any *(area)* franchise area and fails to take reasonable steps to resume such supply, the franchise shall be deemed to be revoked in respect of that area on the date of cessation of that supply.

(2) Where *(a franchise holder ceases to supply gas)* the franchise in respect of any area is deemed to be revoked pursuant to subsection (1) of this section in any area and no new franchise has been granted to any other person in respect of that area, the Minister may make such arrangements as he thinks fit for the continued supply of gas in that area until such time as a new franchise is granted.

(3) Where *(a franchise holder ceases to supply gas)* the franchise in respect of any area is deemed to be revoked pursuant to subsection (1) of this section in any area, the franchise holder shall transfer all his records and plans relating to that area to the new franchise holder or, if no new franchise has been granted, to such person or place as the Minister may determine.

PART III

SUPPLY OF GAS BY FRANCHISE HOLDERS

31. Application of this Part—This Part of this Act shall apply to franchise holders in respect of the ((survey)) supply of piped gas. 5

32. Measurement of gas obtained or supplied by franchise holder—Every franchise holder shall ensure that all gas obtained or produced by the franchise holder, and all gas supplied by the franchise holder under the franchise, is measured by meter in accordance with regulations made 10 under this Act.

33. General duty to supply—(1) Every franchise holder shall carry on business in such a way as to ensure, so far as practicable, a continuous supply of gas.

(2) Except as provided by this Act or by any written 15 agreement with a particular consumer (whether entered into before or after the commencement of this Act) or any regulations made under this Act, a franchise holder shall not cease to supply gas to any consumer or class of consumers or to consumers generally without the prior consent of the 20 Minister or of every consumer who would be affected by the cessation of a supply of gas.

(3) Any franchise holder who fails to comply with subsection (1) or subsection (2) of this section commits an offence against this Act. 25

(4) This section shall not limit or affect the duties and obligations of franchise holders under Part II of this Act.

34. Supply where place already connected to main—

(1) Subject to sections (37 and 38) 37, 38, 40, and 41 of this Act, where any place in a franchise area is already connected 30 to a main of the franchise holder, the franchise holder shall, on the written request of the consumer, supply gas to that place.

(2) Any franchise holder who fails to comply with subsection (1) of this section commits an offence against this 35 Act.

Cf. 1908, No. 69, s. 5

35. Supply where place not already connected to main—(1) Subject to sections (37 and 38) 37, 38, and 41 of

this Act, where any place in a franchise area is not connected to the main of the franchise holder, the franchise holder shall, 5 on the written request of the consumer, supply and lay all necessary pipes and do all other necessary work to connect the place to the main, and shall thereafter supply gas to that place.

New

10 (1A) The cost of supplying and laying so much of any service pipe for the supply of gas to any consumer as is laid down upon the property of that consumer ~~((shall be met by))~~ may be charged to that consumer.

15 (1B) The cost of supplying and laying so much of any service pipe for the supply of gas to any consumer as is laid down outside the property of that consumer shall be met as follows:

- (a) The cost of the first 15 metres shall be met by the franchise holder:
- 20 (b) The cost of the next 15 metres may be charged to the consumer:
- (c) Subject to section 37 of this Act, the cost of any further pipe shall be met by the franchise holder.

(2) Any franchise holder who fails to comply with 25 subsection (1) of this section commits an offence against this Act.

Cf. 1908, No. 69, s. 3 (1)

36. Minister may order supply on application of 20 or more persons—(1) Where 20 or more consumers desire gas

30 to be supplied to their respective places in any franchise area, being places situated in the same road or otherwise in close proximity to one another so that they may conveniently be supplied with gas together, the consumers may, instead of individually applying to the franchise holder under section 35 of this Act, collectively apply to the *(Minister under)* franchise holder under subsection (2) of this section.

(2) Every application under this section shall—

- 40 (a) Identify the places in respect of which a supply of gas is sought, and describe the proximity of the places to each other; and

- (b) State the minimum amount of gas that the consumers are prepared to bind themselves to take in *(every)* the first year.

New

(2A) Where the franchise holder refuses the application made to him under subsection (1) of this section, the 20 or more consumers may apply to the Minister for a review of that decision, stating in the application the particulars required by subsection (2) of this section.

(3) If, after considering any application under subsection (2A) of this section, and giving the franchise holder a reasonable opportunity to make representations in respect of the application, the Minister is satisfied that the supply of gas to the consumers would not be an uneconomic supply within the meaning of section 37 of this Act, or would not be so if certain conditions were imposed, the Minister shall grant the application subject to such conditions (if any) as he thinks fit.

(4) The franchise holder shall, within such period as the Minister may require, do all such work as may be necessary to comply with the Minister's decision, and shall thereafter supply gas as required by that decision.

(5) Any franchise holder who fails to comply with subsection (4) of this section commits an offence against this Act.

37. Special provisions where supply of gas uneconomic—(1) In this section, unless the context otherwise requires,—

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“Annual return” means the annual receipts of the franchise holder from the sales of gas by the extension necessary to supply that gas, less the price of that gas to the franchise holder:

New

“Annual return” means the annual receipts of the franchise holder from the sales of gas by the extension necessary to supply that gas, less the following costs:

(a) The price of that gas to the franchise holder; and

New

(b) Interest on the capital cost of the extension at 16.5 percent per annum or such other percentage as the Minister may from time to time determine by notice in the *Gazette*; and

(c) Depreciation on the capital cost of the extension at 4 percent per annum or such other percentage as the Minister may from time to time determine by notice in the *Gazette*:

“Capital cost of the extension” includes a reasonable allowance for supervision and inspection, and other charges in the course of the construction of the extension:

“Extension” means any addition to or alteration of the distribution system ((of)) through which gas is being supplied by the franchise holder necessary to give satisfactory supply to any place; but does not include any such addition or alteration the cost of which is payable by the consumer:

“Uneconomic supply” means any supply from which the estimated annual return to the franchise holder is less than 20 percent or such other percentage as the Minister may, from time to time, by notice in the *Gazette*, determine of the estimated capital cost of the extension necessary to give the supply.

(2) Subject to this section, a consumer who can be supplied with gas only by an uneconomic supply shall be entitled to a supply of gas only upon such terms as may be agreed upon between the franchise holder and the consumer, and which are not inconsistent with any regulations made under this Act.

New

(2A) Where any extension, in respect of which—

(a) On or after the commencement of this Act, an agreement under subsection (2) of this section has been entered into; or

(b) Before the commencement of this Act, an agreement of a similar nature has been entered into,—

is used, within 5 years from when gas was first supplied pursuant to that agreement, to supply any further consumer,

New

that consumer shall be entitled to be supplied with gas only upon such terms as may be agreed upon between the franchise holder and the further consumer.

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(3) No agreement or series of agreements for an uneconomic supply shall contain provisions which enable a franchise holder to recover a sum of money in respect of any extension greater than the capital cost of the extension necessary to give that supply, together with interest thereon 10 at the true rate of 10 percent per annum.

(4) Where a consumer is not satisfied that the supply of gas to him would be an uneconomic supply, the Minister shall, on application by the consumer, determine if the supply of gas is an uneconomic supply and the consumer and the franchise 15 holder shall be bound by that determination.

Struck Out

(5) Where the consumer and the franchise holder are unable to agree on the terms of supply under subsection (2) of this section, the Minister shall, on application by the 20 consumer, determine the terms of supply and the consumer and the franchise holder shall be bound by that determination, but the consumer may withdraw his application for supply.

(6) Where any agreement for an uneconomic supply 25 stipulates that the consumer shall pay an annual sum on account of that supply, all money paid by the consumer for gas supplied during the year to which that annual sum relates shall be applied in reduction of that annual sum.

(7) Gas supplied under an agreement subject to this section 30 shall be supplied at the same rates for the time being charged by the franchise holder to similar consumers whose supply is not subject to an agreement under this section.

(8) The provisions of this section shall be notified to the consumer by the franchise holder before any agreement 35 between them for a supply of gas is made pursuant to this section.

(9) Any franchise holder who fails to comply with subsection (8) of this section commits an offence against this Act. 40

38. Refusal of supply—(1) A franchise holder may decline any request for the supply or increased supply of gas to any consumer if that supply or increased supply would be impracticable, or would be likely to adversely affect the existing supply to any other consumer.

(2) If a franchise holder declines a request for the supply or increased supply of gas in reliance on the provisions of subsection (1) of this section, the franchise holder shall give the person making the request the facts upon which the franchise holder relies for declining the request.

39. Application to District Court in respect of refusal to supply—(1) Any person who is declined a supply or increased supply of gas pursuant to section 38 (1) of this Act may apply to a District Court in accordance with this section and shall give notice of the application to any other consumers who may be adversely affected.

(2) Every such application shall be heard and determined by a District Court Judge and any consumer who may be adversely affected may also be heard; and such application shall be limited to the question whether the supply or further supply of gas would be impracticable or would be likely to adversely affect the existing supply to any other consumer and after hearing all the evidence the Judge shall make an order accordingly.

40. Discontinuance of supply—(1) A franchise holder may cease to supply gas to any consumer if—

(a) The consumer fails within (one month of demand) 28 days of the date of the invoice to pay all charges properly payable by him to the franchise holder for the supply of gas (whether or not any security held under section 41 of this Act has been offset against those charges); or

(b) Any meter, pipes, or other fittings used in the supply of gas to that consumer are damaged in such a manner as to affect the safe supply of gas, or are interfered with in such a manner as to affect the accurate metering of the gas.

(2) The right of discontinuance of supply conferred by subsection (1) of this section shall be without prejudice to any other remedy that may be available in law to a franchise

holder in the event of the non-payment of any charges of a kind referred to in paragraph (a) of that subsection, or of any damage to or interference with any property of a kind referred to in paragraph (b) of that subsection.

(3) Where the franchise holder has ceased to supply gas pursuant to subsection (1) of this section, the franchise holder shall resume supply when the outstanding charges (including the cost of disconnection and reconnection) have been paid, or the damage restored, or the interference remedied:

Provided that, except where the damage or interference was not wilfully caused by the consumer, any security required under section 41 (b) of this Act may be for an amount not exceeding the estimated charges for the supply of gas to the consumer for any period not exceeding 6 months.

41. Franchise holder may require agreement and security as condition of supply—Where a consumer has requested a franchise holder to supply gas to any place the franchise holder may, at any time thereafter, by notice in writing, require the consumer, as a condition of that supply,—

- (a) To enter into a written agreement with the franchise holder to receive and pay for a supply of gas for a period of at least 12 months:
- (b) To give security for the payment of an amount that may from time to time become due to the franchise holder for the supply of gas to that consumer, the amount not to exceed the estimated charges for a 2 month's period.

Cf. 1908, No. 69, s. 3 (3) (b), (c), (4)

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42. Liability of incoming occupier for arrears of gas charges—Where a consumer leaves any place without paying all gas charges then owing by him the franchise holder shall be entitled to recover the arrears in respect of the period from the date the meter was last read until the consumer left the place, from any incoming consumer who uses gas in that place unless, before the incoming consumer commences to use the gas, he gives to the franchise holder at least 24 hours' notice of his intention to do so.

New

42. Incoming consumer to notify franchise holder before using gas—Every incoming consumer to any place shall give the franchise holder at least 24 hours' notice in writing of his intention to do so before he uses any gas in that place.

Cf. 1908, No. 69, s. 7

PART IV

POWERS AND DUTIES OF FRANCHISE HOLDERS

10 **43. General powers of franchise holders**—Subject to this Part of this Act, for the purposes of the production and supply of gas in accordance with a franchise, a franchise holder may do all or any of the following things:

- 15 (a) Break up, cut into, or remove the ground of any road, and erect, install, or lay (*such*) fittings in, on, or under any road (*or in or on any wall adjacent to a road*):
- (b) With the consent of the owner, exercise in respect of a private way any of the powers conferred by paragraph (a) of this subsection:
- 20 (c) Maintain, repair, or replace anything erected, installed, laid, or made by the franchise holder for the purpose of the manufacture or supply of gas in accordance with the franchise:
- 25 (d) Generally do all such things that the franchise holder reasonably considers to be necessary or desirable for the proper supply of gas in accordance with the franchise.

44. Execution against franchise holder's property restricted—Notwithstanding any enactment or rule of law, 30 no person shall be entitled, for the enforcement of any debt owed by a franchise holder, to levy or seize in execution any pipe or fitting or other property owned by the franchise holder but laid or installed in, on, or under any place of which the franchise holder is neither the owner nor the occupier.

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45. Railway land—Subject to section 49 of this Act, no franchise holder shall enter upon, or do any work upon or affecting, any railway land or railway work otherwise than

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with the prior consent of the New Zealand Railways Corporation and in accordance with any terms and conditions prescribed by the New Zealand Railways Corporation on giving its consent.

5

46. Ownership of pipes—Every pipe installed to connect a franchise holder's main with any meter shall remain the property of the franchise holder notwithstanding that a consumer may have paid for the supply and installation of the pipe.

10

47. Local authority may require pipes to be moved—

(1) Subject to subsection (2) of this section, any local authority having jurisdiction over any road in a franchise area may at any time, by notice in writing, require the franchise holder to raise, lower, or otherwise alter the position of any pipe or other equipment laid in any such road.

15

(2) The local authority shall not be entitled to require anything to be done under subsection (1) of this section that would be likely to cause permanent damage to any such pipe or equipment, or to prevent or impede the flow of gas as freely as before.

20

(3) The cost of all work required to be done under subsection (1) of this section, and all compensation for damage caused to any property of the franchise holder or of any other person, shall be paid by the local authority.

25

(4) If the franchise holder refuses or fails within a reasonable time to do the work required under subsection (1) of this section, the local authority may, subject to subsection (2) of this section after giving 7 days' written notice of its intention to do so, do or have done the work itself.

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(5) No claim by or against the local authority for betterment shall be allowed in respect of any work done under subsection (1) of this section.

48. Owners and occupiers of private land and buildings may move pipes—(1) The owner or occupier of any private land or buildings into, through, or against which pipes or other works have been lawfully laid down or placed may, at his own expense on giving (48 hours') 7 days' written notice to the franchise holder, with the consent of the franchise holder (which consent shall not be unreasonably withheld) move such pipes or other works and re-lay or

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replace them, subject to the work being lawfully carried out and to such conditions as the franchise holder may reasonably impose.

(2) The owner or occupier who moves or replaces any pipes or other works under subsection (1) of this section shall be liable to pay compensation to the franchise holder for any damage done thereby or for any hindrance or obstruction which may be occasioned thereby to the supply of gas for use by other consumers.

10 **49. Right of entry on to land**—In any case of emergency involving possible danger to life or property from any cause, any person acting under the authority of a franchise holder may, at any time on any day, enter upon any place to inspect any pipes, fittings, meters, gas appliances, or gas installations
15 in that place, or, if he is unable to gain immediate entry, he may forthwith cut off the supply of gas to alleviate that danger.

50. Approval of local authority required for road works—No franchise holder shall open, break up, or cut into
20 any road, nor lay any main in a road at any depth, otherwise than in accordance with such reasonable conditions as the local authority having jurisdiction over that road may prescribe.

51. Notice to be given before certain works undertaken—(1) Except as provided in subsection (3) of this section, before a franchise holder proceeds to open, break up, or cut into, any land or structure, the franchise holder shall give to the local authority or other body or person having jurisdiction over the same, at least 7 days' written notice of
30 the intention to undertake the work or such lesser period of
notice as may be agreed by that local authority or other body
or person.

(2) Every such notice shall specify the location of the proposed work, the nature of the work to be undertaken, and
35 the reasons for it.

(3) Where any such work is rendered urgent and necessary by any escape of gas, defective equipment, or other emergency, the franchise holder shall be excused from complying with the requirements of subsection (1) of this
40 section before commencing the work, but shall give the information required by subsection (2) of this section as soon as practicable thereafter.

52. Works to be completed without delay—Where a franchise holder opens, breaks up, or cuts into any land or structure, the franchise holder shall proceed with all reasonable speed to complete the works, and shall thereupon fill in and reinstate and make good the land or structure and remove all rubbish occasioned by the works to the satisfaction of the local authority or other body or person having jurisdiction over the same. 5

53. Precautions to be taken in connection with road works—Where a franchise holder opens, breaks up, or cuts into any road or other land to which the public have access, the franchise holder shall cause the works to be adequately fenced and, during the hours of darkness, to be sufficiently lit to warn persons of the presence of the works. 10

54. Completion of works by other persons—Where a franchise holder fails to comply with section 52 of this Act, the local authority or other body or person concerned, after giving the franchise holder 7 days' written notice of its intention, may cause the work so delayed or omitted to be executed, and the expense thereof shall be recoverable by that local authority or other body or person as a debt due by the franchise holder. 15 20

55. Offence for failure to comply with any of sections 51 to 53 of this Act—A franchise holder who fails to comply with any of sections 51 to 53 of this Act commits an offence against this Act. 25

56. Power to execute works on private land—
 (1) Subject to this section, a franchise holder (not being a territorial authority, or a regional council or united council within the meaning of the Local Government Act 1974) may lay pipes under any private land or erect thereon or lay thereunder any fittings or gas installations necessary for the proper and efficient distribution of gas within the franchise area (*without being bound to acquire such land or an easement over such land*) and the franchise holder shall have right of way by the best available route to and along all such works for the franchise holder's servants, workmen, and agents from time to time and at all times, with or without any suitable or available means of conveyance, and with all such tools, machinery, articles, and materials as may be necessary for the construction of such works or for the maintenance or repairing of the same or for the doing of anything hereby 30 35 40

authorised; and may also deposit and store from time to time upon any land adjoining such works all such machinery and material of any kind as may be used in or for the construction or repairing of such works.

- 5 (2) Nothing in this section shall authorise the franchise holder to lay pipes under (*land appurtenant to any dwellinghouse or to any improvement ancillary thereto*) private land or to erect thereon or lay thereunder any fittings or gas installations, without—
- 10 (a) The written permission of the owner of the land; or
 (b) The franchise holder acquiring such part of the land as is necessary for the requirements of the franchise holder or an easement over such part.
- (3) The franchise holder shall exercise the powers under
 15 this section in a reasonable manner.

Struck Out

(4) The franchise holder shall, before occupying or using any land for the purposes of construction or maintenance of such works (and except in the case of any accident or other
 20 emergency requiring immediate repairs) give to the owner and the occupier of such land not less than 6 weeks notice in writing and shall state in such notice the use proposed to be made of such land.

(5) The said owner or occupier may, within 21 days after
 25 receiving such notice, and after giving notice to the said franchise holder of his intention to do so, apply to any District Court Judge, who may thereupon summons a representative of the franchise holder to appear before him at a time and place to be named in the summons.

30 (6) If it appears to the District Court Judge, after hearing the applicant and the representative of the franchise holder that the use proposed to be made of the said land is unreasonable or unnecessary, or that other neighbouring lands are more suitable to be used for the purpose proposed,
 35 the District Court Judge may, by writing under his hand, order that the land in question shall not be occupied or used in the manner proposed.

(7) If it appears to the District Court Judge, after hearing
 40 the applicant and the representative of the franchise holder that the use proposed to be made of the land is reasonable and necessary, he may in like manner order that the said land may be occupied and used in such manner and to such extent only and subject to such limitations and restrictions as he shall think fit, and all persons concerned shall be bound by any
 45 such order.

57. Franchise holder liable to pay compensation for property damage—Every franchise holder shall be liable in damages for any damage or other direct financial loss caused to the property of any person, notwithstanding that the damage was caused by the franchise holder in the lawful 5 exercise of any of the powers conferred on the franchise holder under this Act.

PART V

GENERAL PROVISIONS

58. Gas suppliers—(1) Every gas supplier who is selling 10 biogas at the date of commencement of this Act shall advise the Secretary within one month of that date of the place or places from which the gas is sold.

(2) Every person who intends to become a gas supplier of biogas or any other gas that is declared by the Governor- 15 General to be a gas to which this section applies shall notify the Secretary of his intention at least one month before the commencement of the sale of gas, and state the place or places from which the gas is to be sold.

(3) Every person who intends to change the place or places 20 from which gas to which this section applies is to be sold shall notify the Secretary of the change at least one month before the change is to take place.

(4) Every gas supplier shall ensure that all gas obtained through pipes, and all gas produced or supplied (other than 25 liquid petroleum gas) by the gas supplier is measured by meter.

59. Standards for gas supply—All gas supplied shall be of such quality and pressure as is for the time being prescribed by regulations made under this Act, or by any 30 other Act or regulations relating to the safe supply and use of gas or, in the absence of any such Act or regulations or in so far as such Act or regulations do not extend, as approved by the Chief Inspecting Engineer.

60. Safety requirements for gas installations—All 35 pipes, gas appliances, and gas installations shall be of such quality and standard and shall be constructed, maintained, and operated in accordance with safety requirements prescribed by regulations made under this Act or, in the absence of regulations or in so far as the regulations do not 40 extend, approved by the Chief Inspecting Engineer.

61. Prevention of escape of gas—(1) Every franchise holder and gas supplier shall take all reasonable steps to prevent any unnecessary escape of gas from any pipes or gas installation under the control of the franchise holder or gas
5 supplier.

(2) Any franchise holder or gas supplier who fails to comply with subsection (1) of this section commits an offence against this Act.

62. Penalty for obstructing officers and workmen—
10 Every person who wilfully obstructs any engineer, surveyor, overseer, workman, or other person in the performance of any duty or in doing any work he has lawful authority to do under this Act commits an offence against this Act.

63. Copy of Act to be available for inspection at office of every franchise holder—(1) Every franchise holder shall at all times after the expiration of 3 months from the date of commencement of this Act keep in the principal office of the franchise holder a copy of this Act and any regulations made under this Act, and any person may inspect the copy at any
20 time during normal business hours.

(2) If any franchise holder fails to comply with subsection (1) of this section, he commits an offence against this Act.

64. Penalties—(1) Every person who commits an offence against section 15 of this Act shall be liable on summary
25 conviction to a fine not exceeding \$1,000 for each day during which the offence continues.

(2) Every franchise holder who commits an offence against section 63 of this Act shall be liable on summary conviction to a fine not exceeding \$100.

30 (3) Every person who commits an offence against any of the provisions of this Act for which no penalty is otherwise provided shall be liable on summary conviction to a fine not exceeding \$1,000.

65. Damage to be made good in addition to penalty—
35 Where any person has been convicted of an offence under this Act and, in the committing of the offence, damage was caused to the property of a franchise holder or gas supplier, that person shall, in addition to any penalty imposed on his conviction, be liable to pay to the franchise holder or gas
40 supplier the cost of restoring or repairing the damaged property, and the amount payable shall be recoverable as a debt due to the franchise holder or gas supplier.

66. Regulations—(1) The Governor-General may from time to time make such regulations as are necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the general power conferred by subsection (1) of this section, regulations may be made under this section for all or any of the following purposes: 5

- (a) Regulating and controlling the supply of gas and the installation or use of fittings, (*gas appliances,*) gas installations, and meters used for or in connection 10 with the supply or use of gas:

New

(aa) Providing for the appointment of Gas Installation Inspectors to inspect and test gas installations:

New

(ab) Providing for the protection of gas pipes, gas installations, and other equipment: 15

(b) Prescribing standards in respect of the calorific value, purity, and odour of gas supplied:

(c) Prescribing minimum permissible pressures at which 20 gas may be supplied:

(d) Providing for the testing of meters:

(e) Prescribing the fees payable in respect of applications, inspections, and tests made under this Act and for the remission or refund of any such fees: 25

(f) Prescribing fines not exceeding \$1,000 for offences against any regulations made under this Act.

(3) The Gas Industry Regulations 1978 are hereby deemed to have been made under this Act, and may be amended or 30 revoked accordingly.

67. Abolition of Gas Council—(1) The Gas Council established under section 3 of the Gas Industry Act 1958 is hereby abolished.

(2) All property vested in or held by the Gas Council immediately before the date of commencement of this Act 35 shall on that date, without conveyance, transfer, or assignment, vest in the Crown, subject to all liabilities, charges, obligations, and trusts affecting that property.

(3) All contracts, debts, engagements, and liabilities of the Gas Council immediately before the date of commencement of this Act shall, on that date, become the contracts, debts, engagements, and liabilities of the Crown.

5 (4) All money payable to the Gas Council shall, on the date of commencement of this Act, become payable to the Crown.

New

67A. Gas meter testing fees—(1) Notwithstanding that the Gas Meter Testing Fees Determination 1981 was not
10 lawfully made, it is hereby declared that—

- (a) The said determination is hereby validated and deemed to have been lawfully made:
- (b) All actions taken by Meter Inspectors in levying and collecting the fees under the determination are
15 hereby validated and deemed to have been lawful:
- (c) All money received by Meter Inspectors in payment of those fees is hereby deemed to have been lawfully paid to and received by them:
- (d) Such fees under that determination as have not yet
20 been paid to a Meter Inspector are hereby deemed to be lawfully payable, and capable of being collected as if the determination of those fees had been lawfully made.

68. Conflict with special Acts—Where any conflict
25 arises between the provisions of this Act and the provisions of the Acts specified in the First Schedule to this Act, the provisions of this Act shall prevail.

69. Consequential amendments—(1) The Ministry of Energy Act 1977 is hereby consequentially amended by
30 omitting from the First Schedule the references to the Gas Supply Act 1908 and the Gas Industry Act 1958, and substituting the reference to the Gas Act 1982.

(2) The Local Government Act 1974 is hereby consequentially amended in the manner specified in the Second
35 Schedule to this Act.

70. Repeals—(1) The enactments specified in the Third
Schedule to this Act are hereby repealed.

(2) The Orders in Council specified in the Fourth Schedule to the Act are hereby revoked.

(3) The notice of the 2nd April 1982 by the Minister of Energy declaring an area to be a region for the purpose of supplying natural gas, and published in the *Gazette* dated the 7th day of April 1982 on page 1167 is hereby revoked. 5

SCHEDULES

Section 16

FIRST SCHEDULE

Name of Gas Distributor	Authorising Enactment
The Auckland Gas Company Limited	The Auckland Gas Company's Act 1871.
The Christchurch Gas Coal and Coke Company Limited	The Christchurch Gas Act 1870.
The Gisborne Gas Company Limited	The Gisborne Gas Company Act 1884.
The Hastings Gas Company Limited	The Hastings Gas Company Act 1958.
The Hawera Gas Company Limited	The Hawera Gasworks and Electric Lighting Act 1897.
The Napier Gas Company Limited	The Napier Gas Company's Act 1875.
The Wellington Gas Company Limited	The Wellington Gas Company's Act 1870.

SECOND SCHEDULE

Section 69 (2)

CONSEQUENTIAL AMENDMENTS TO LOCAL GOVERNMENT ACT 1974

Section Amended	Amendment
Section 520 (as enacted by section 2 of the Local Government Amendment Act 1979)	By repealing paragraph (b), and substituting the following paragraph: “(b) Subject to the Gas Act <u>1982</u> , a territorial authority may do all things necessary to supply piped manufactured or natural gas to the inhabitants of the district.”.
Section 521 (as so enacted)	By repealing this section.
Section 525 (as so enacted and amended by section 43 of the Local Government Amendment Act 1980)	By omitting the words “, subject to section 20B of the Gas Industry Act 1958”, and substituting the words “, subject to the Gas Act <u>1982</u> ”.
Section 530 (as so enacted)	By inserting, before the words “If any person”, the words “Subject to any other Act,”.
Section 532 (as so enacted)	By omitting the words “paragraphs (b) and (c) of section 520 of this Act”, and substituting the words “paragraph (c) of section 520 of this Act and the Gas Act <u>1982</u> ”.

THIRD SCHEDULE

Section 70

ENACTMENTS REPEALED

- 1908, No. 69—The Gas Supply Act 1908. (Reprinted 1980, R.S. Vol. 6, p. 491.)
- 1958, No. 43—The Gas Industry Act 1958.
- 1960, No. 64—The Gas Industry Amendment Act 1960.
- 1961, No. 24—The Gas Industry Amendment Act 1961.
- 1965, No. 86—The Gas Industry Amendment Act 1965.
- 1970, No. 65—The Gas Industry Amendment Act 1970.
- 1970, No. 131—The Gas Supply Amendment Act 1970. (Reprinted 1980, R.S. Vol. 6, p. 499.)
- 1977, No. 33—The Ministry of Energy Act 1977: Part IV of the Second Schedule.
- 1979, No. 59—The Local Government Amendment Act 1979: Section 5 and so much of Part III of the Third Schedule as relates to the Gas Supply Act 1908.
- 1979, No. 91—The Gas Industry Amendment Act 1979.
- 1980, No. 82—The Local Government Amendment Act 1980: Section 43 (1)
- 1981, No. 71—The Gas Industry Amendment Act 1981.

FOURTH SCHEDULE

Section 70 (2)

REVOCATIONS

Title or Subject	Gazette Reference
The Gas Supply (Borough of Huntly) Order 1980	Gazette 1980, Vol. 3, p. 2761
Hawera Gas Company Limited—Retail Gas Supply Authorisation	Gazette 1982, p. 1496
East Coast Gas Supply Limited—Retail Gas Supply Authorisation	Gazette 1982, p. 1496
Wanganui City Council—Extension of Gas Distribution Area	Gazette 1982, p. 1624
