
STATUTORY INSTRUMENTS

1996 No. 275

The Gas (Northern Ireland) Order 1996

PART II

GAS SUPPLY AND ASSOCIATED ACTIVITIES

Major pipe-lines, gas storage facilities and gas processing facilities

Consent of Director for construction of major pipe-line

35.—(1) Any person who executes works for the construction of a major pipe-line—

- (a) without the consent of the Director granted under this Article; or
- (b) otherwise than in accordance with the conditions subject to which the consent of the Director is granted under this Article,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) For the purposes of this Article a major pipe-line is a pipe-line which when constructed—

- (a) will exceed 7 kilometres in length; and
- (b) will have a design operating pressure exceeding 7 bar gauge.

(3) The Director may by regulations amend the definition of major pipe-line in paragraph (2).

(4) An application for the consent of the Director under this Article shall—

- (a) specify the points between which the proposed pipe-line is to run and be accompanied by a map on which is delineated the route which it is proposed to take;
- (b) specify the length, diameter and capacity of the proposed pipe-line;
- (c) be in such form, contain such other information and be accompanied by such fee as may be prescribed by regulations made by the Director.

(5) An applicant for a consent under this Article shall provide the Director with such other information relevant to the application as the Director may require.

(6) As soon as practicable after making an application for a consent under this Article, the applicant shall publish notice of that fact in such manner as the Director may require and such notice shall—

- (a) name a place where a copy of the application (and the map accompanying it) may be inspected free of charge, and copies thereof may be obtained on payment of a reasonable charge, at all reasonable hours; and
- (b) specify a time within which representations concerning the application may be made to the Director.

(7) After considering any such representations duly made to him, the Director may grant consent under this Article to the applicant or may refuse such consent.

- (8) A consent granted under this Article—
 - (a) shall remain in force for such period as may be specified in or determined under the consent; and
 - (b) may be granted subject to such conditions (to be specified therein) as the Director thinks fit.
- (9) Without prejudice to the generality of paragraph (8)(b), a consent under this Article may be granted subject to conditions—
 - (a) as to the route which the pipe-line is to take (subject to such limits of lateral deviation as may be specified);
 - (b) as to the ownership and operation of the pipe-line;
 - (c) requiring works for the construction of the pipe-line to be substantially commenced within a specified period;
 - (d) requiring the pipe-line, or any specified length of it, to be so constructed as to be capable of conveying specified quantities of gas.
- (10) Paragraph (11) applies where—
 - (a) representations concerning an application are duly made to the Director under paragraph (6); and
 - (b) a consent granted in pursuance of that application indicates that specified conditions are, or are to a specified extent, attributable solely to such representations;and references in paragraphs (11) and (12) to “additional conditions” are references to conditions specified under sub-paragraph (b) or (as the case may be) to such conditions to the extent so specified.
- (11) Where this paragraph applies, the consent—
 - (a) shall specify the sums or the method of determining the sums which the Director considers should be paid to the applicant by such of the persons who made representations to the Director as are specified, for the purpose of defraying so much of the cost of constructing the pipe-line as is attributable to the additional conditions;
 - (b) shall specify the arrangements which the Director considers should be made by each of those persons, within a specified period, for the purpose of securing that those sums will be paid to the applicant if he constructs the pipe-line in accordance with the additional conditions.
- (12) Where it appears to the Director that arrangements specified under paragraph (11)(b) have not been made by any person within the period so specified, the Director may amend the consent so as to eliminate the additional conditions so far as attributable to the representations made by that person.
- (13) In paragraphs (9) to (12) “specified” means specified in the consent.
- (14) Sums received by the Director under this Article shall be paid into the Consolidated Fund.

Increase of capacity, etc. of pipe-line

- 36.**—(1) If in the case of a pipe-line operated by a person holding a licence under Article 8(1) (a) (“the operator”) it appears to the Director, on the application of a person other than the operator, that the pipe-line can and should be modified—
- (a) by installing in it a junction through which another pipe-line may be connected to it; or
 - (b) by modifying apparatus and works associated with a high pressure pipe-line so as to increase the capacity of the pipe-line,

then, subject to paragraph (3), the Director may, after giving to the operator an opportunity of being heard about the matter, give directions to the operator in accordance with paragraph (2) in consequence of the application.

- (2) Directions under paragraph (1) may—
- (a) specify the modifications which the Director considers should be made in consequence of the application;
 - (b) specify the sums or the methods of determining the sums which the Director considers should be paid to the operator by the applicant for the purpose of defraying the cost of the modifications;
 - (c) specify the arrangements which the Director considers should be made by the applicant, within a period specified in the directions, for the purpose of securing that those sums will be paid to the operator if he carries out the modifications;
 - (d) require the operator, if the applicant makes those arrangements within the period specified under sub-paragraph (c), to carry out the modifications within a period specified in the directions.

(3) Where the Director proposes to give directions under paragraph (1), it shall be his duty before doing so to give to the applicant particulars of the modifications which he proposes to specify in the directions.

(4) The obligation to comply with any directions under paragraph (1) is a duty owed to any person who may be affected by a contravention of them.

(5) Where a duty is owed by virtue of paragraph (4) to any person, any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit or instance of that person.

(6) In any proceedings brought against any person in pursuance of paragraph (5), it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the directions in question.

(7) Without prejudice to any right which any person may have by virtue of paragraph (5) to bring civil proceedings in respect of any contravention or apprehended contravention of any directions under paragraph (1), compliance with any such directions shall be enforceable by civil proceedings by the Director for an injunction or for any other appropriate relief.

- (8) In this Article “high pressure pipe-line” means any pipe-line which—
- (a) has a design operating pressure exceeding 7 bar gauge; or
 - (b) is of a class specified by order made by the Department.

Consent of Director for construction of gas storage facility

- 37.—**(1) Any person who executes works for the construction of a gas storage facility—
- (a) without the consent of the Director granted under this Article; or
 - (b) otherwise than in accordance with the conditions subject to which the consent of the Director is granted under this Article,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) For the purposes of this Article the execution of works in land for the purpose of determining whether or not it is suitable as the location of a gas storage facility and the carrying out of surveying operations for that purpose shall be deemed not to constitute the execution of works for the construction of a gas storage facility.

- (3) An application for the consent of the Director under this Article shall—
- (a) specify the location and capacity of the proposed gas storage facility;

- (b) be in such form, contain such other information and be accompanied by such fee as may be prescribed by regulations made by the Director.
 - (4) An applicant for a consent under this Article shall provide the Director with such other information relevant to the application as the Director may require.
 - (5) As soon as practicable after making an application for a consent under this Article, the applicant shall publish notice of that fact in such manner as the Director may require and such notice shall—
 - (a) name a place where a copy of the application may be inspected free of charge, and copies thereof may be obtained on payment of a reasonable charge, at all reasonable hours; and
 - (b) specify a time within which representations concerning the application may be made to the Director.
 - (6) After considering any such representations duly made to him, the Director may grant consent under this Article to the applicant or may refuse such consent.
 - (7) A consent granted under this Article—
 - (a) shall remain in force for such period as may be specified in or determined under the consent; and
 - (b) may be granted subject to such conditions (to be specified therein) as the Director thinks fit.
 - (8) Without prejudice to the generality of paragraph (7)(b), a consent under this Article may be granted subject to conditions—
 - (a) as to the ownership and operation of the gas storage facility;
 - (b) requiring works for the construction of the facility to be substantially commenced within a specified period;
 - (c) requiring the facility to be so constructed as to be capable of storing specified quantities of gas.
 - (9) Paragraph (10) applies where—
 - (a) representations concerning an application are duly made to the Director under paragraph (5); and
 - (b) a consent granted in pursuance of that application indicates that specified conditions are, or are to a specified extent, attributable solely to such representations;
- and references in paragraphs (10) and (11) to “additional conditions” are references to conditions specified under sub-paragraph (b) or (as the case may be) to such conditions to the extent so specified.
- (10) Where this paragraph applies, the consent—
 - (a) shall specify the sums or the method of determining the sums which the Director considers should be paid to the applicant by such of the persons who made representations to the Director as are specified, for the purpose of defraying so much of the cost of constructing the gas storage facility as is attributable to the additional conditions;
 - (b) shall specify the arrangements which the Director considers should be made by each of those persons, within a specified period, for the purpose of securing that those sums will be paid to the applicant if he constructs the gas storage facility in accordance with the additional conditions.
 - (11) Where it appears to the Director that arrangements specified under paragraph (10)(b) have not been made by any person within the period so specified, the Director may amend the consent so as to eliminate the additional conditions so far as attributable to the representations made by that person.
 - (12) In paragraphs (8) to (11) “specified” means specified in the consent.

(13) Sums received by the Director under this Article shall be paid into the Consolidated Fund.

Increase of capacity of gas storage facility

38.—(1) If in the case of a gas storage facility operated by a person holding a licence under Article 8(1)(b) (“the operator”) it appears to the Director, on the application of a person other than the operator, that the gas storage facility can and should be modified to increase the capacity of that facility, then, subject to paragraph (2), the Director may, after giving to the operator an opportunity of being heard about the matter, give directions to the operator in consequence of the application.

(2) Paragraphs (2) to (7) of Article 36 apply in relation to directions under paragraph (1) of this Article as they apply in relation to directions under paragraph (1) of that Article.

Acquisition of rights to use gas processing facilities

39.—(1) In the case of any gas processing facility operated otherwise than by the holder of a licence under Article 8(1)(a), any person may, after giving the owner of the facility not less than 28 days' notice, apply to the Department for directions under this Article which would secure to the applicant a right to have processed by the facility, during a period specified in the application, quantities so specified of gas which—

- (a) is of a kind so specified; and
- (b) is of, or of a kind similar to, the kind which the facility is designed to process.

(2) Where an application is made under paragraph (1), it shall be the duty of the Department—

- (a) to decide whether the application is to be adjourned (so as to enable negotiations or further negotiations to take place), considered further or rejected;
- (b) to give notice of its decision to the applicant; and
- (c) in the case of a decision that the application is to be considered further, to give to the owner of the facility and to any person who has a right to have gas processed by the facility notice that the application is to be so considered and an opportunity of being heard about the matter.

(3) Where, after further considering an application under paragraph (1), the Department is satisfied that the giving of directions under this Article would not prejudice the efficient operation of the facility, or the processing by the facility of—

- (a) the quantities of gas which the owner of the facility or any associate of the owner requires or may reasonably be expected to require to be processed by the facility for the purposes of any business carried on by him; and
- (b) the quantities of gas which any person who is not such an associate and has a right to have gas processed by the facility is entitled to require to be so processed in the exercise of that right,

the Department may give such directions to the owner of the facility.

(4) Directions under this Article may—

- (a) specify the terms on which the Department considers the owner of the facility should enter into an agreement with the applicant for all or any of the following purposes—
 - (i) for securing to the applicant the right to have processed by the facility, during the period specified in the directions and in the quantities so specified, gas which is of a kind so specified;
 - (ii) for securing that the exercise of that right is not prevented or impeded;
 - (iii) for regulating the charges which may be made for the processing of gas by virtue of that right;

- (iv) for securing to the applicant such ancillary or incidental rights as the Department considers necessary or expedient, which may include the right to have a pipe-line of his connected to the facility by the owner;
 - (b) specify the sums or the method of determining the sums which the Department considers should be paid by way of consideration for any such right; and
 - (c) require the owner, if the applicant pays or agrees to pay those sums within a period specified in that behalf in the directions, to enter into an agreement with him on the terms so specified.
- (5) Paragraphs (4) to (7) of Article 36 apply in relation to directions under this Article as they apply in relation to directions under paragraph (1) of that Article, but with the substitution in paragraph (7) of a reference to the Department for the reference to the Director.

(6) In this Article—

“gas processing facility” means any facility which carries out gas processing operations;

“gas processing operation” means any of the following operations, namely—

- (a) purifying, blending, odourising or compressing gas for the purpose of enabling it to be introduced into a pipe-line system operated by the holder of a licence under Article 8(1) (a) or to be conveyed to an electricity generating station, a gas storage facility or any place outside Northern Ireland;
- (b) removing from gas for that purpose any of its constituent gases, or separating from gas for that purpose any oil or water; and
- (c) determining the quantity or quality of gas which is or is to be so introduced, or so conveyed, whether generally or by or on behalf of a particular person,

and “process”, in relation to gas, shall be construed accordingly;

“owner”, in relation to a gas processing facility, includes a lessee and any person occupying or having control of the facility.

(7) For the purposes of this Article a person is an associate of the owner of a gas processing facility if—

- (a) both of them are companies; and
- (b) one of the companies has control of the other, or both are under the control of the same person or persons;

and subsections (2) to (5) of section 416 of the Income and Corporation Taxes Act 1988 shall apply for the purposes of sub-paragraph (b) as they apply for the purposes of Part XI of that Act.