

2013 No. 92

GAS

ELECTRICITY

**The Gas and Electricity (Internal Markets) Regulations
(Northern Ireland) 2013**

Made - - - - *28th March 2013*

Coming into operation - *12th April 2013*

The Department of Enterprise, Trade and Investment (“the Department”) makes the following Regulations in exercise of the powers conferred upon it by section 2(2) of the European Communities Act 1972^(a) (“the 1972 Act”) as read with paragraph 1A of Schedule 2 to the 1972 Act.

The Department is designated for the purposes of section 2(2) of the 1972 Act in relation to energy and energy sources^(b).

These Regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Department that it is expedient for the references to Regulation (EC) No. 174/2009 of the European Parliament and of the Council on conditions for access to the network for cross border exchanges in electricity and to Regulation (EC) No. 175/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks in the Energy (Northern Ireland) Order 2003 to be construed as references to those Regulations as amended from time to time.

Citation and commencement

1. These Regulations may be cited as the Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2013 and shall come into operation on 12th April 2013.

PART I

AMENDMENT TO ENERGY (NORTHERN IRELAND) ORDER 2003

Amendment

2. The Energy (Northern Ireland) Order 2003^(c) is amended as provided in this Part.

(a) 1972 c.68

(b) The European Communities (Designation) Order 2010 S.I. 2010/761

(c) S.I. 2003/419 (N.I. 6)

Interpretation

3. In Article 2(2)

- (a) at the end of the definitions of “the Electricity Regulation” and “the Gas Regulation” in each case insert “as amended from time to time”;
- (b) in the definition of “exemption holder” omit the “or” at the end of sub-paragraph (e) and at the end of sub-paragraph (f) insert “or” and thereafter add
““(g) an LNG facility exemption holder;”;
- (c) after the definition of “licence holder” insert—
“ “LNG facility exemption holder” means the person who carries on an activity referred to in Article 6(1)(d) of the Gas Order under the authority of an exemption granted pursuant to Article 7 of that Order;”;
- (d) after the definition of “Northern Ireland” insert—
““the SEM Order” means the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007(a);”.

Duty on the Authority to consult and co-operate with other Authorities

4. In Article 8A for paragraph (4) substitute—

“(4) Article 9 of the SEM Order does not apply in relation to the exercise of any function of the Authority under this Article but otherwise the provisions of this Article are without prejudice to any provisions of the SEM Order.”.

Exceptions from general duties

5. In Article 13 for paragraph (1A) substitute—

“(1A) Article 12 does not apply in relation to the carrying out of functions of the Department or the Authority to which Article 9 of the SEM Order applies.

(1B) For the purposes of Article 9 of the SEM Order, the interests of Northern Ireland consumers include their interests in the fulfilment by the Authority when carrying out functions to which that Article applies, of the objectives set out in Article 36(a) to (h) of the Electricity Directive.”.

PART II

AMENDMENT TO ELECTRICITY (SINGLE WHOLESALE MARKET) (NORTHERN IRELAND) ORDER 2007

Amendment

6. Schedule 2 to the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 is amended as provided in this Part.

Independence of SEM Committee

7. After paragraph 1(3) insert—

“(3A) A person appointed as a member of the SEM Committee shall not—

- (a) carry out any activity or have any financial or other interest that might compromise or might reasonably be seen to compromise that person’s impartiality; or

(a) S.I. 2007/913 (N.I. 7)

- (b) seek or take any instructions from any person or body that might compromise or might reasonably be seen to compromise the independence of that person as a member of the SEM Committee.”.

8. In paragraph 1(5) for “Paragraphs 2, 3 and 4” substitute “Sub-paragraph (3A) and paragraphs 2, 3 and 4.”.

9. For paragraph 3(1) substitute—

“(1) An appointment of a person as a member shall be for a term of not less than 5 years or for a term of not more than 7 years.

(1A) The appointment of a person as a member may only be renewed once.

(1B) To ensure continuity of the functioning of the SEM Committee, the Department shall ensure that there is a rotation of the membership of the Committee and accordingly the Department shall appoint members so that their terms of office will not all expire at the same time.”.

10. For paragraph 3(4)(a)(ii) and (5)(a)(ii) substitute in each case—

“(ii) for breach of paragraph 1(3A);”.

PART III

AMENDMENT TO GAS (NORTHERN IRELAND) ORDER 1996

Amendment

11. The Gas (Northern Ireland) Order 1996(a) is amended as provided in this Part.

Interpretation

12. In Article 3(1)—

(a) after the definition of “information” insert—

““LNG” means liquid gas, and gas which has been, or is to be, treated in an LNG facility;

“LNG facility” means a terminal which is used for the liquefaction of natural gas or the importation, offloading and regasification of LNG, and includes ancillary services and temporary storage necessary for the regasification process and subsequent delivery to a gas transmission system, but does not include any part of an LNG terminal used for storage;”;

(b) for the full stop at the end of the definition of “the Monopolies Commission” substitute “;” and thereafter insert—

““operate” in relation to an LNG facility includes the carrying out of the functions of liquefaction of natural gas or the importation, offloading and regasification of LNG;”.

(a) S.I. 1996/275 (N.I. 2)

Prohibition on operating an LNG facility

13. In Article 6(1), delete “or” at the end of sub-paragraph (b), for the comma at the end of sub-paragraph (c) substitute “; or” and thereafter insert—

“(d) operates an LNG facility.”.

Exemptions from prohibition or owning an LNG facility

14. In Article 7(1), for “or (c)” substitute “, (c) or (d)”.

Conditions for exemptions generally

15. After Article 7(4) insert—

“(4A) Without prejudice to the generality of paragraph (1)(c) an order under this Article shall specify such conditions as appear to the Department to be requisite or expedient to ensure that the activity authorised by the exemption is carried out in compliance with the relevant requirements and prohibitions laid down by the Directive.

(4B) If any condition to which any exemption is subject in pursuance of paragraph (4A) is not complied with by any person who carries on an activity under the authority of the exemption, the Department may give to that person a direction declaring that the exemption is revoked so far as it relates to that person to such extent and as from such date as may be specified in the direction.”.

Closed distribution systems

16. After Article 7 insert—

“Closed distribution systems

7A.—(1) A conveyance exemption holder may apply to the Authority for any distribution system through which gas is conveyed under his exemption to be classified as a closed distribution system.

(2) Where the Authority has received an application under paragraph (1) in relation to any distribution system, it must classify that system as a closed distribution system if the Authority considers that all of the following criteria are met, that is to say—

- (a) the distribution system is not used for the purpose of supplying gas to household customers, or is used to supply fewer than 50 household customers who—
 - (i) are employees of, or work for or otherwise render services to, the conveyance exemption holder or a person related to the conveyance exemption holder; and
 - (ii) take a supply of gas that is wholly or mainly from a gas production site embedded in the distribution system;
- (b) the distribution system is wholly or mainly used for distributing gas within a geographically self contained industrial, commercial or shared services site and is not integrated with any pipeline system operated by the holder of a licence under Article 8(1)(a); and
- (c) the distribution system is wholly or mainly used either—
 - (i) by system users whose businesses, for technical or safety related reasons, have operational or production premises that are integrated with those of other system users of that distribution system; or
 - (ii) for the purpose of supplying gas to premises owned or occupied by the conveyance exemption holder or by a person related to the conveyance exemption holder.

- (3) An application under paragraph (1) must—
- (a) identify the distribution system to which the application relates;
 - (b) include any evidence available to the applicant in support of the application; and
 - (c) provide any further information or documents that the Authority may request in respect of the application.
- (4) The Authority must decide whether to classify a distribution system as a closed distribution system as soon as is reasonably practical after the Authority has received—
- (a) the application under paragraph (1); and
 - (b) any further information or documents requested by it under paragraph (3)(c).
- (5) The Authority must notify the person making the application under paragraph (1) of its decision as soon as is reasonably practicable after that decision has been made.

7B.—(1) Any condition specified in an order under Article 7(1)(c) in respect of a conveyance exemption which requires the approval of the Authority for the methodology of calculating a system charge in relation to a distribution system or which imposes any obligation on the holder of the exemption in relation to that approval, shall not apply in relation to any closed distribution system.

(2) Where the holder of a conveyance exemption who operates or has control of a closed distribution system receives an expression of interest from a customer who owns or occupies premises that are connected to the system, he must—

- (a) inform that customer that the distribution system in question is a closed distribution system; and
- (b) within 7 working days, beginning on the day on which he receives the expression of interest, by notice inform any third party supplier identified in the expression of interest that the distribution system in question is a closed distribution system.

(3) Where a customer has served an expression of interest in respect of a closed distribution system and—

- (a) the customer, or a third party supplier identified in that expression of interest, serves a notice on the holder of the exemption relating to that distribution system requesting that the methodology for a proposed system charge be submitted to the Authority for approval; and
- (b) at the time of receiving the request the holder of the exemption has not received any confirmation that the customer has entered into a contract with a third party, then paragraph (4) applies.

(4) From the time the holder of the conveyance exemption receives the request referred to in paragraph (3)(a), the conditions referred to in paragraph (1) shall have effect as if the distribution system in question were not a closed distribution system.

(5) Where a customer who owns or occupies premises that are connected to a closed distribution system has served a notice on the holder of a conveyance exemption relating to that system that he has entered into a contract with a third party supplier (“the confirmed third party supplier”) and—

- (a) the customer or the confirmed third party supplier serves on the holder of the exemption a notice requesting that the methodology for use of the system charge that is being applied be submitted to the Authority for approval; and
- (b) the methodology for calculating the charge has not previously been approved by the Authority,

paragraphs (6) to (11) apply.

(6) The holder of the exemption must, within 20 working days, beginning with the day on which he receives the request under paragraph (5)—

- (a) provide the Authority with a charging statement in respect of the methodology for any system charge applied at the time the request was made and such other information or documents as the Authority may specify; and
- (b) provide the customer and the confirmed third party supplier with a copy of that charging statement.

(7) Where the Authority has requested further documents or information in accordance with paragraph (6)(a) at a time when there are fewer than 10 working days remaining in the 20 working day period mentioned in that sub-paragraph, those further documents or information must be provided within 10 working days beginning with the day on which the holder of the exemption received the request for further documents or information.

(8) Where the holder of the exemption has complied with paragraph (6)(a), the Authority must as soon as is reasonably practicable—

- (a) decide whether to approve the methodology set out in the charging statement; and
- (b) notify the conveyance exemption holder and the confirmed third party supplier of its decision.

(9) Where the Authority does not approve the methodology, it must give reasons for that decision.

(10) Where the Authority has notified the holder of the exemption of a decision that it does not approve the methodology, that holder must not continue to impose a system charge except where the Authority has considered the methodology for such a charge and has approved it.

(11) Where the Authority has not approved a methodology submitted under paragraph (6), the holder of the exemption may—

- (a) submit to the Authority a charging statement containing details of a revised methodology;
- (b) provide the Authority with such other information and documents as the Authority may specify; and
- (c) send a copy of the charging statement to the customer and the confirmed third party supplier.

(12) If the holder of the exemption takes the steps mentioned in paragraph (11), paragraphs (8) and (9) apply as if he had complied with paragraph (6).

7C.—(1) If, after a system has been classified as a closed distribution system, there is a change of circumstances which affects or might affect whether the system continues to meet the criteria set out in Article 7A(2), the holder of the exemption relating to the distribution system must notify the Authority of the change as soon as is reasonably practicable after it occurs.

(2) If the holder of the exemption wishes the system to continue to be classified as a closed distribution system, he must include in the notice an application to the Authority asking the Authority to confirm the classification.

(3) Any application under paragraph (2) must—

- (a) identify the distribution system to which the application relates;
- (b) include any evidence available to the applicant in support of the application; and
- (c) provide any further information or documentation that the Authority may request in respect of the application.

(4) Where the Authority has received a notice under paragraph (1) it must as soon as is reasonably practicable either—

- (a) revoke the classification; or
- (b) confirm the classification if—
 - (i) the notice includes an application under paragraph (2);

- (ii) the Authority has received any further information or documents requested by it; and
- (iii) the Authority considers that the criteria set out in Article 7A(2) continue to be met.

(5) The Authority must notify the applicant of its decision under this Article as soon as is reasonably practicable after that decision has been made.

7D.—(1) In Article 7A to 7C—

“charging statement” in relation to a conveyance exemption holder who proposes to impose a system charge means a statement containing details of the proposed methodology for calculating the system charge;

“closed distribution system” means a system classified as such by the Authority under Article 7A(2);

“conveyance exemption” means an exemption from Article 6(1)(a) and “conveyance exemption holder” means a person who carries on an activity under the authority of the exemption;

“customer” means a person who purchases gas for the person’s own consumption;

“distribution system” means a pipeline system by means of which the person who operates or has control of the system conveys gas in circumstances such as that that person is carrying on an activity which amounts to the distribution of gas within the meaning given by Article 2(5) of the Directive;

“expression of interest” in relation to the holder of a conveyance exemption means a notice served on that holder by a customer who—

- (a) owns or occupies premises which are connected to any distribution system to which the exemption relates;
- (b) takes a supply of gas through that system from the holder or a person related to the holder,

which expresses the customer’s interest in taking a supply of gas from a third party supplier through the system, which contains or is accompanied by evidence that at least one third party supplier would be willing to supply the customer with gas through that system and which identifies any such third party;

“gas producer” means a gas undertaking carrying out the function of production mentioned in Article 2(1) of the Directive;

“gas production site” means a site at which a person carries out an activity by virtue of which he is a gas producer;

“household customer” means a customer who purchases gas for consumption by the customer’s own household;

“system user” in relation to a distribution system means—

- (a) a person supplying gas that is being conveyed by means of that distribution system; or
- (b) a customer who owns or occupies premises that are connected to that distribution system;

“third party supplier” in relation to a conveyance exemption holder means any person authorised by licence or exemption to supply gas who is not or is not related to the conveyance exemption holder;

“system charge” in relation to a conveyance exemption holder means a charge which—

- (a) is levied by the holder on a third party supplier identified in an expression of interest that has been served on the holder; and
- (b) is for use of the distribution system to which the expression of interest relates.

(2) For the purposes of Article 7A to 7C and the definitions in paragraph (1), a person (“A”) is related to another person (“B”) where A is—

- (a) an undertaking in which B has a participating interest within the meaning of Section 421A of the Financial Services and Markets Act 2000^(a);
- (b) a holding company of B;
- (c) a subsidiary of B; or
- (d) a subsidiary of a holding company of B.

(3) For the purposes of paragraph (2), “holding company” and “subsidiary” are to be construed in accordance with section 1159 of the Companies Act 2006^(b).

Licences authorising operating an LNG facility

17.—(1) In Article 8(1) for the full stop at the end of sub-paragraph (c) substitute “;” and thereafter add—

“(d) to operate an LNG facility.”.

(2) In Article 8(2) for the full stop at the end substitute “;” and thereafter add—

“(d) extend a licence granted under paragraph (1)(d) by adding to the specified LNG facility.”.

Licence conditions

18.—(1) In Article 10A(5)(a) delete “to whom Article 26(1) of the Directive applies” and after Article 10A(5) insert—

“(5A) Paragraph (5)(a) does not apply in the case of a licence holder who distributes gas (within the meaning of Article 2(5) of the Directive) through one or more pipeline systems to which there are less than 100,000 premises connected.”.

(2) In Article 10A(5) for the full stop at the end substitute “; and” and insert—

“(c) to which Article 7(4) of the Directive applies, require that person to comply with the requirements of that paragraph.”.

(3) In Article 10A(6)(b)(ii) for “Article 13(4) or 13(5)” substitute “Article 14(4) or 14(5)”.

(4) In Article 10A, after paragraph (9) insert—

“(10) The conditions included in a licence in accordance with paragraph (1) shall, in particular, in the case of a licence under Article 8(1)(d) ensure that the holder does not disclose or abuse information contrary to Article 16 of the Directive and shall require the holder as appropriate having regard to the activities authorised by the licence—

- (a) to carry out the tasks laid down for him by Article 13(1) of the Directive;
- (b) require the licence holder to keep accounts in accordance with the requirements of Article 31 of the Directive and to have them audited in accordance with those requirements and shall confer on the Department or the Authority a right of access to the licence holder’s accounts for the purposes of ensuring compliance with those requirements; and
- (c) to comply with the requirements for system access laid down by Article 32 of the Directive (as read with Article 2 of the Commission Decision).”.

(a) 2000 c.8 as amended by S.I. 2008/948

(b) 2006 c. 46

Exemption from requirement for system access

19. After Article 10A insert—

“Exemption from requirement for system access

10B.—(1) Where any licence under Article 8(1)(a) or (d) is subject to a relevant condition, the holder of such a licence may apply to the Authority for an exemption under this Article with respect to the system or any part of the system to which the condition applies.

(2) An application under paragraph (1) may be sent to the Authority only after a person has applied for access to the system or part of the system in question in accordance with a relevant condition.

(3) Such an application may be made before or after the holder of the licence has refused access.

(4) An application made after such a refusal must, however, be made before the end of the 7 days beginning with the date of the refusal.

(5) An application under paragraph (1) may only be made if the holder of the licence considers that allowing the application for system access would cause serious financial difficulties because of take or pay commitments of the licence holder under one or more gas purchase contracts.

(6) An application under paragraph (1) must enclose all relevant information, including in particular information with respect to—

- (a) the nature and extent of the difficulties mentioned in paragraph (5) which the holder of the licence considers would arise (“the difficulties”);
- (b) any steps taken by the holder of the licence to prevent the difficulties from arising; and
- (c) the period over which the holder considers the difficulties would arise.

(7) The Authority may give an exemption under this Article if it considers that—

- (a) having regard to any steps taken by the holder of the licence to prevent the difficulties from arising, the only reasonably available means of prevention is an exemption under this Article; and
- (b) an exemption ought to be given having regard to—
 - (i) the objective of achieving a competitive gas market;
 - (ii) the need for the holder to comply with any relevant public service obligations within the meaning of paragraph (2) of Article 3 of the Directive which has been imposed on the holder pursuant to that paragraph;
 - (iii) the need to ensure security of supply of gas;
 - (iv) the position of the holder of the licence in the gas market and the level of competition in the market;
 - (v) the level of seriousness of the difficulties;
 - (vi) the time when the gas purchase contract was entered into and the extent to which the holder could reasonably have foreseen at that time that the difficulties were likely to arise;
 - (vii) the terms of the gas purchase contract, including the extent to which the contract allows for market changes;
 - (viii) the significance of the system or part of the system to which the application under paragraph (1) applies; and
 - (ix) the overall effect of the exemption on the operation of an economically efficient gas market.

(8) An exemption under this Article must be given for a limited period and in writing and must specify—

- (a) the period of the exemption; and
- (b) any conditions the Authority considers necessary in order to ensure that the holder of the licence to whom the exemption is granted takes all reasonably practical steps to ensure that, by the time that the exemption expires, the difficulties would no longer arise.

(9) If the Authority has given an exemption under this Article, it must send to the European Commission as soon as is reasonably practicable—

- (a) a copy of the decision to give the exemption, including the conditions subject to which the exemption was given; and
- (b) any other information the Authority considers relevant to the exemption or to the terms in which the exemption was given.

(10) An exemption under this Article may be modified or revoked by the Authority—

- (a) in accordance with its provisions;
- (b) at any other time, if the Authority considers that an exemption under this Article is no longer required.

(11) The Authority must modify or revoke an exemption given under this Article if required to do so by the European Commission in accordance with Article 48(2) of the Directive.

(12) In this Article,

- (a) “relevant condition” means a condition included in a licence under Article 10A(3) or (10) and relating to compliance with the requirement for system access laid down by Article 32 of the Directive; and
- (b) “system” includes in relation to the holder of a licence under Article 8(1)(d) an LNG facility;
- (c) “take or pay commitment” and “gas purchase contract” has the same meaning as in Article 48(1) of the Directive.”.

Standard conditions of licences

20. In Article 11(1), (1A) and (2) in each place where it occurs for “or (c)” substitute “, (c) or (d)”.

Assignment of licences

21. In Article 12(1) after sub-paragraph (c) for “,” substitute “;” and thereafter insert—

“(d) in the case of a licence under Article 8(1)(d), so far as relating to any specified LNG facility,”.

Powers of licence holders

22. In Article 13(1), for “or (b)” substitute “, (b) or (d)”.

Modification of licences

23. In Article 14(1), (2) and (11) in each place where it occurs for “or (c)” substitute “, (c) or (d)”.

Modification references to Monopolies Commission

24. In Article 15(2)(a) for “or (c)” substitute “, (c) or (d)”.

Modification following report

25. In Article 17(2) and (6) in each place where it occurs for “or (c)” substitute “, (c) or (d)”.

Competition Commission’s power to veto modifications following report

26. In Article 17A(9), for “or (c)” substitute “, (c) or (d)”.

Modification by order under other statutory provisions

27. In Article 18, in paragraph (1), (2) and (4) in each place where it occurs for “or (c)” substitute “, (c) or (d)”.

Dispute resolution

28.—(1) In Article 27A(1) for sub-paragraph (a) substitute—

“(a) the subject matter of the complaint constitutes a dispute between the complainant and—

- (i) the holder of a licence under Article 8(1)(a);
- (ii) the holder of a licence under Article 8(1)(b);
- (iii) the holder of a licence under Article 8(1)(d);
- (iv) the holder of an exemption from Article 6(1)(a);
- (v) the holder of an exemption from Article 6(1)(b); or
- (vi) the holder of an exemption from Article 6(1)(d);”.

(2) After Article 27A(6) insert—

“(7) Where the Authority makes a determination in pursuance of this Article it may include in the determination an order requiring any party to the dispute to pay such sum in respect of the cost or expenses incurred by the Authority as it considers appropriate and this order shall be final and shall be enforceable as if it were a judgment of the county court.

(8) In making an order under paragraph (7) the Authority shall have regard to the conduct and means of the parties and other relevant circumstances.

(9) In this Article a reference to the holder of a particular exemption means a person who carries on an activity under the authority of that exemption.”.

Consents relating to LNG facilities

29.—(1) After Article 37 insert—

“Consent of Department for construction of LNG facility

37A.—(1) Any person who executes work for the construction of an LNG facility—

- (a) without the consent of the Department granted under this Article; or
- (b) otherwise in accordance with the conditions subject to which the consent of the Department 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 on land for the purposes of determining whether or not it is suitable as the location of an LNG 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 an LNG facility.

(3) An application for the consent of the Department under this Article shall—

- (a) specify the location and capacity of the proposed LNG facility;
- (b) be in such form, contain such other information and be accompanied by such fee as may be specified by the Department.

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

- (a) name the 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 Department.

(5) After considering any such representations duly made to it, the Department may grant consent under this Article to the applicant or may refuse such consent.

(6) 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 Department thinks fit.

(7) Without prejudice to the generality of paragraph (6)(b), a consent under this Article may be granted subject to conditions—

- (a) as to the ownership and operation of the LNG 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 dealing with specified quantities of gas.

(8) Paragraph (9) applies where—

- (a) representations concerning an application are duly made to the Department under paragraph (4); 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 (9) and (10) 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.

(9) Where this paragraph applies, the consent—

- (a) shall specify the sums or the methods of determining the sums which the Department considers should be paid to the applicant by such persons who made such representations to the Department as are specified, for the purpose of defraying so much of the cost of constructing the LNG facility as is attributable to the additional conditions;
- (b) shall specify the arrangements which the Department 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 LNG facility in accordance with the additional conditions.

(10) Where it appears to the Department that arrangements specified under paragraph (9)(b) have not been made by any person within the period so specified, the Department may amend the consent so as to eliminate any additional condition so far as it is attributable to the representations made by that person.

(11) In paragraphs (9) to (10) “specified” means specified in the consent.

(12) Sums received by the Department under this Article shall be paid into the Consolidated Fund.”.

(2) After Article 38A insert—

“Increase of capacity of LNG facility

38B.—(1) If in the case of an LNG facility operated by a person holding a licence under Article 8(1)(d) (“the operator”) it appears to the Authority, on the application of a person other than the operator, that the LNG facility can be modified to increase the capacity of that facility, then, subject to paragraph (2), the Authority 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.”.

Exemptions for new infrastructure

30.—(1) After Article 39 insert—

“39A.—(1) A person who is or expects to be the holder of a licence may apply for any major pipeline (within the meaning of Article 35), any gas storage facility or any LNG facility whose operation is authorised by the licence and any modification of such a pipeline or facility to be exempt from a relevant requirement if paragraph (3) applies in relation to it.

(2) For the purposes of paragraph (1) a relevant requirement is—

- (a) in the case of an applicant who conveys or intends to convey gas through a gas transmission pipeline, and who holds or expects to hold a licence under Article 8(1)(a), the requirement under Article 8B that he be certified at all times when he acts under the authority of the licence;
- (b) any condition specified in an order under Article 7(1)(c) or included in a licence under Article 10A insofar as it relates to compliance with Articles 32, 33 or 34 of the Directive; and
- (c) any conditions specified in an order under Article 7(1)(c) or included in a licence under Article 10A insofar as it relates to the determination of tariffs or methods for the determination of tariffs for connection and access to pipelines or facilities or the provision of balancing services,

insofar as the requirement relates to any pipeline or facility to which an application under paragraph (1) relates.

(3) This Article applies to any pipeline or facility which is not yet operational and to any modification of a pipeline or facility which provides for a significant increase in capacity or is intended to enable the development of new sources of gas supply and which is not yet operational.

(4) The Authority must send to the European Commission a copy of any application under paragraph (1) as soon as is reasonably practicable following its receipt.

(5) On receipt of an application under paragraph (1), the Authority must decide whether or not to grant the exemption to which it relates after taking into account the matters specified in Article 36(1) of the Directive.

(6) An exemption under this Article must, if granted, be in writing and on the following terms, that is to say—

- (a) terms specifying the period of the exemption or specifying how that period is to be determined;
- (b) terms on whether the exemption applies to all of the pipeline or facility to which the application relates or only a specified part thereof;
- (c) terms requiring charges to be imposed on users of the pipeline or facility and for specifying or determining the amount of those charges;
- (d) terms which ensure that the exemption is not detrimental to competition or the effective functioning of the market in gas in Northern Ireland or to the achievement of the objectives or the discharge of the general duties of the Authority and the Department under Part III of the Energy (Northern Ireland) Order 2003; and
- (e) such terms regarding non discriminatory access to the pipeline or facility in question as the Authority considers appropriate.

(7) An exemption given in accordance with this Article may apply to all the capacity of the pipeline or facility concerned or to part of the capacity only, regardless of the extent of the exemption applied for; but this is subject to paragraph (8).

(8) In respect of a pipeline or facility which is or is to be modified to provide for a significant increase in its capacity, an exemption by virtue of this Article may only be given in relation to that increase in its capacity or part of that increase in its capacity.

(9) Subject to the following provisions, an exemption may not be given by virtue of this Article more than once in respect of the same pipeline or facility.

(10) Paragraph (9) does not prevent a further exemption being given in respect of any pipeline or facility or modification if that exemption has been revoked under Article 39B.

(11) Paragraph (9) does not prevent a further exemption being given in respect of a pipeline or facility if—

- (a) it is to be modified so as to provide for a significant increase in its capacity or to enable development of a new source of gas supply;
- (b) the exemption has effect only in relation to that modification; and
- (c) no previous exemption has been given in respect of that modification.

(12) Where the Authority makes a decision to refuse or give an exemption in accordance with this Article, it must publish that decision together with the reasons for its decision in such manner as it considers appropriate.

39B. If the Authority gives, or refuses to give, an exemption in accordance with Article 39A, it must send the following to the European Commission as soon as is reasonably practicable—

- (a) if the exemption was given, a copy of the exemption and of the terms on which it was given;
- (b) the Authority's reason for giving the exemption or not giving it, which must address each of the matters listed in Article 36(1) of the Directive;
- (c) any supporting information held by the Authority which is relevant to the application for an exemption, including in particular any—
 - (i) relevant financial information; and
 - (ii) analysis of the likely effects of the exemption on competition and on the effective functioning of the market for natural gas in Northern Ireland;
- (d) if the exemption was given, the basis on which the Authority determined—
 - (i) the period of the exemption or how that period is to be determined; and
 - (ii) the capacity to which the exemption relates;

- (e) any contribution by the pipeline or facility to the diversification of the supply of gas; and
 - (f) any other information requested by the European Commission.
- (2) If, in accordance with Article 36(9) of the Directive, the European Commission requires the Authority to revoke an exemption given in accordance with Article 39A, or to modify the terms on which it is given, the Authority must—
- (a) comply with that request within the period of one month beginning with the date on which it receives the request; and
 - (b) inform the European Commission when it has done so.
- (3) The Authority must revoke an exemption given in accordance with Article 39A in respect of a pipeline or facility—
- (a) if its construction or, as the case may be, the making of the modification to which the exemption relates has not been started within the 2 years beginning with the relevant date; or
 - (b) if it, or (as the case may be) the modification to which the exemption relates, is not operational within 5 years beginning on the relevant date.
- (4) In paragraph (3) “relevant date” means—
- (a) if the European Commission notified the Authority that it approved the exemption and terms as copied to it under paragraph (1), the date of that notification;
 - (b) if, in accordance with Article 36(9) of the Directive, the European Commission required the Authority to modify the terms, the date of that requirement; or
 - (c) otherwise the date 4 months after the Authority sent the Commission a copy of the exemption and terms under paragraph (1).
- (5) The Authority may, at any other time, revoke an exemption given in accordance with Article 39A or modify the terms on which such an exemption is given, in respect of a pipeline, facility or modification—
- (a) in accordance with the provisions of the exemption; or
 - (b) by giving the owner of the pipeline or facility in question a notice of a revocation at least 4 months before the revocation takes effect.”.

PART IV

MISCELLANEOUS ELECTRICITY AND GAS AMENDMENTS

Billing disputes: electricity

31.—(1) Article 6 of the Competition and Service (Electricity) (Northern Ireland) Order 1992(**a**) is repealed.

(2) Regulation 7 of the Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011(**b**) is revoked.

(3) After Article 47 of the Electricity (Northern Ireland) Order 1992(**c**) insert—

(**a**) S.I. 1992/1720 (N.I. 13)
 (**b**) S.R. 2011 No. 155
 (**c**) S.I. 1992/231 (N.I. 1)

“Billing disputes

47A.—(1) A billing dispute—

- (a) may be referred by the customer who is party to the dispute to the Authority for determination in accordance with this Article; and
- (b) on such a reference, shall be determined by order made by the Authority or, if the Authority thinks fit, an arbitrator appointed by the Authority.

(2) In this Article “billing dispute” means a dispute between an electricity supplier and a customer concerning the amount of the charge which the supplier is entitled to recover from the customer in connection with the provision of electricity supply services.

(3) The practice and procedure to be followed in connection with the determination of billing disputes shall be such as the Authority thinks appropriate and shall be published by the Authority.

(4) Except with the consent of the Authority, no billing dispute may be referred for determination under this Article—

- (a) unless the matter in dispute has first been referred to the General Consumer Council pursuant to Article 22 of the Energy (Northern Ireland) Order 2003(a) and the matter has not been resolved to the satisfaction of the customer within 3 months of the matter being referred to the General Consumer Council;
- (b) after the end of the period of 12 months after the end of the period in respect of which the charge which is the subject of the dispute applies.

(5) Where a billing dispute is referred to the Authority, an order under this Article shall be made and notified to the parties to the dispute within the requisite period or such longer period as the Authority may agree with the person referring the dispute.

(6) For the purposes of paragraph (5), the requisite period in any case means—

- (a) the period of 2 months from the date when the dispute was referred to the Authority; or
- (b) where the information given to the Authority in relation to the dispute was in its opinion insufficient to enable it to make a determination, the period of 4 months from the date the dispute was referred to the Authority.

(7) A person making an order under this Article shall include in the order his reasons for making his decision with respect to the dispute.

(8) An order under this Article—

- (a) may include provision requiring either party to the dispute to pay a sum in respect of the costs and expenses of the person making the order; and
- (b) shall be final and enforceable as if it were a judgment of the county court.

(9) In including in an order under this Article any such provision as to costs or expenses as is mentioned in paragraph 8(a), the person making the order shall have regard to the conduct and means of the parties and any other relevant circumstances.

(10) The Authority or an arbitrator appointed by it shall not determine any billing dispute which is the subject of proceedings before, or with respect to which judgment has been given by, any court.

(11) Neither party to any billing dispute which has been referred to the Authority for determination in accordance with this Article shall commence proceedings before any court in respect of that dispute pending the determination of the dispute in accordance with this Article.

(a) S.I. 2003/419 (N.I. 6)

(12) An electricity supplier may not commence proceedings before any court in respect of any charge in connection with the provision by him of electricity supply services unless, not less than 28 days before doing so, the customer concerned was informed by him, in such form and manner (if any) as may be required by any condition of the electricity supplier's licence of—

- (a) his intention to commence proceedings; and
- (b) the customer's rights by virtue of this Article.

(13) The powers of the Authority under Article 31 shall also be exercisable for any purpose connected with the determination of any billing dispute referred to him in accordance with this Article as they are exercisable for a purpose mentioned in paragraph (1) of that Article.”.

Billing disputes: gas

32.—(1) Regulation 8 of the Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011(a) is revoked.

(2) After Article 24A of the Gas (Northern Ireland) Order 1996(b) insert—

“Billing disputes

24B.—(1) A billing dispute—

- (a) may be referred by the customer who is party to the dispute to the Authority for determination in accordance with this Article; and
- (b) on such a reference, shall be determined by order made by the Authority or, if the Authority thinks fit, an arbitrator appointed by the Authority.

(2) In this Article “billing dispute” means a dispute between the gas supplier and a customer concerning the amount of the charge which the supplier is entitled to recover from a customer in connection with the provision of gas supply services.

(3) The practice and procedure to be followed in connection with the determination of billing disputes shall be such as the Authority thinks appropriate and shall be published by the Authority.

(4) Except with the consent of the Authority, no billing dispute may be referred for determination under this Article—

- (a) unless the matter in dispute has first been referred to the General Consumer Council pursuant to Article 22 of the Energy (Northern Ireland) Order 2003(c) and the matter has not been resolved to the satisfaction of the customer within 3 months of the matter being referred to the General Consumer Council;
- (b) after the end of the period of 12 months after the end of the period in respect of which the charge which is the subject of the dispute applies.

(5) Where a billing dispute is referred to the Authority, an order under this Article shall be made and notified to the parties to the dispute within the requisite period or such longer periods as the Authority may agree with the person referring the dispute.

(6) For the purposes of paragraph (5), the requisite period in any case means—

- (a) the period of 2 months from the date when the dispute was referred to the Authority; or
- (b) where the information given to the Authority in relation to the dispute was in its opinion insufficient to enable a determination to be made, the period of 4 months from the date the dispute was referred to the Authority.

(a) S.R. 2011 No. 155

(b) S.I. 1996/275 (N.I. 2) Art 24A inserted by S.R. 2009/412

(c) S.I. 2003/419 (N.I. 6)

(7) A person making an order under this Article shall include in the order his reasons for reaching the decision with respect to the dispute.

(8) An order under this Article—

- (a) may include provision requiring either party to the dispute to pay a sum in respect of the costs and expenses of the person making the order; and
- (b) shall be final and enforceable as if it were a judgment of the county court.

(9) In including in an order under this Article any such provision as to costs or expenses as is mentioned in paragraph (8)(a), the person making the order shall have regard to the conduct and means of the parties and any other relevant circumstances.

(10) The Authority or the arbitrator appointed by him shall not determine any billing dispute which is the subject of proceedings before, or with respect to which judgment has been given by, any court.

(11) Neither party to any billing dispute which has been referred to the Authority for determination in accordance with this Article shall commence proceedings before any court in respect of that dispute pending the determination of the dispute in accordance with this Article.

(12) A gas supplier may not commence proceedings before any court in respect of any charge in connection with the provision by him of gas supply services unless, not less than 28 days before doing so, the customer concerned was informed by him, in such form and manner (if any) as may be required by any conditions of the gas supplier's licence, of—

- (a) his intention to commence proceedings; and
- (b) the customer's rights by virtue of this Article.

(13) The powers of the Authority under Article 30 shall also be exercisable for any purpose connected with the determination of any billing dispute referred to him in accordance with this Article as they are exercisable for a purpose mentioned in paragraph (1) of that Article.”.

Time limit for modifying licences

33. In each of Regulations 91 and 92 of the Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011(a), paragraph (7) shall be amended by substituting the words “30th April 2014” for “the end of the period of 12 months beginning with the day on which this regulation comes into operation” and paragraph (8) is revoked.

Application of prohibition on unlicensed distribution

34. Regulation 31 of the Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 shall be amended by substituting “32” for “31”.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 28th day of March 2013.



A F Hepper
A senior officer of the
Department of Enterprise, Trade and Investment

(a) S.R. 2011 No. 155

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Electricity (Northern Ireland) Order 1992 (“the Electricity Order”), the Gas (Northern Ireland) Order 1996 (“the Gas Order”), the Energy (Northern Ireland) Order 2003 (“the Energy Order”) and the Electricity (Single Wholesale Market)(Northern Ireland) Order 2007 (“the SEM Order”) to ensure that they conform with the requirements of—

- (a) Directive 2009/72/EC of the European Parliament and of the Council concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (“the Electricity Directive”);
- (b) Directive 2009/73/EC of the European Parliament and of the Council concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (“the Gas Directive”);
- (c) Regulation (EC) No. 714/2009 of the European Parliament and of the Council of 13th July 2009 on conditions for access to the network of cross border exchanges in electricity and repealing Regulation (EC) No. 1228/2003 (“the Electricity Regulation”); and
- (d) Regulation (EC) No. 715/2009 of the European Parliament and of the Council of 13th July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No. 1775/2005 (“the Gas Regulation”).

Part I amends the Energy Order. In particular—

- (a) the definitions of the Electricity Regulation and the Gas Regulation are expanded so that the powers of the Northern Ireland Authority for Utility Regulation (“the Authority”) to impose penalties under Part VI of that Order apply in relation to breaches of those Regulations as they are amended from time to time (Regulation 3(a));
- (b) the duties of the Authority in consulting and co-operating with other Authorities are realigned to separate out this function from the functions of the Authority under the Single Electricity Market regime established by the SEM Order (Regulation 4);
- (c) the Authority is expressly placed under an obligation, when carrying out its functions relating to the Single Electricity Market, to fulfil the objectives set out in Article 36(a) to (h) of the Electricity Directive (Regulation 5).

Part II amends the SEM Order to ensure that the SEM Committee fully meets the requirements of the Electricity Directive for the independence of that Committee and its members.

Part III amends the Gas Order. In particular—

- (a) It introduces a separate prohibition on the unauthorised operation of a Liquefied Natural Gas facility (LNG), creates exemptions from that prohibition and a licensing regime for such operations. It amends Article 10A of the Gas Order requiring inclusion of appropriate conditions in LNG licences to ensure that the authorised activities comply with various requirements of the Gas Directive. The Order also sets out a requirement for the consent of the Department for the construction of an LNG facility and for the consent of the Authority in relation to any increase in the capacity of an LNG facility. The Regulations also make a number of consequential changes so that the provisions in the Gas Order relating to—
 - (i) standard conditions of licences;
 - (ii) assignment of licences;
 - (iii) powers of licence holders; and
 - (iv) modification of licences,reflect the introduction of the new licensing regime (Regulations 13, 14, 17, 18(4) and 20 to 27).

- (b) The Regulations also amend Article 27A (Dispute resolution) to bring within its scope disputes concerning the holder of an LNG licence or an LNG exemption and to provide for costs orders in relation to any dispute dealt with under that provision (Regulation 28).

Apart from the amendments relating to LNG, Part III also amends the Gas Order as follows—

1. The provisions relating to exemptions under Article 7 are amended to expressly include an obligation on the Department to include conditions to ensure that the activities authorised by the exemptions are carried out in compliance with the Gas Directive and to provide for the revocation of the exemption in any case where the conditions are not complied with (Regulation 15).

2. The Regulations also provide for the classification of closed distribution systems and, where such a system is so classified, any conditions imposed on the holder of a conveyance exemption requiring that tariffs for the use of his distribution system, or the methodologies underlying them, are approved by the Authority do not have effect in certain circumstances (Regulation 16).

3. The Regulations also provide for the Authority to grant an exemption to holders of a gas conveyance licence or an LNG licence from any condition in such a licence requiring system access. This exemption may only be granted where allowing system access would cause serious financial difficulties because of take or pay commitments of the licence holder under one or more gas purchase contracts (Regulation 19).

4. The Regulations also amend Article 10A to clarify that, in the case of the holder of a gas conveyance licence forming part of a vertically integrated undertaking, the requirement for that person to comply with the requirements of Article 26 of the Directive for independence does not apply where he distributes gas to fewer than 100,000 customers (Regulation 18(1)).

5. The Regulations also provide for the imposition of licence conditions on the holder of a gas conveyance licence forming part of a vertically integrated undertaking to require that, where he participates in a joint undertaking to promote regional or bilateral solidarity the requirements of Article 7(4) of the Directive for a compliance programme are met (Regulation 18(2)).

6. The Regulations also provide for the holder of a licence who proposes to provide new gas infrastructure to be exempted from certain requirements of the Directive relating to certification of the unbundling of transmission system operators; to third party access to transmission and distribution systems, storage and LNG facilities; and to tariffs and the underlying methodology for connection and access to pipelines or facilities or the provision of balancing services (Regulation 30).

Part IV corrects a number of minor errors in or in relation to the Gas and Electricity Orders and, in Regulation 33, extends the time limit for the modification of existing electricity and gas licences to ensure compliance with the provisions of the Electricity Directive and the Gas Directive.

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