
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 [F¹Authority] 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 [F²Authority] granted under this Article; or
- (b) otherwise than in accordance with the conditions subject to which the consent of the [F²Authority] 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 [F³Authority] may by regulations amend the definition of major pipe-line in paragraph (2).

(4) An application for the consent of the [F³Authority] 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 [F³Authority].

(5) An applicant for a consent under this Article shall provide the [F³Authority] with such other information relevant to the application as the [F³Authority] 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 [F³Authority] 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 [F³Authority].

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(7) After considering any such representations duly made to [F⁴it, the Authority] 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 [F⁵Authority] 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 [F⁶Authority] 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 [F⁶Authority] considers should be paid to the applicant by such of the persons who made representations to the [F⁶Authority] 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 [F⁶Authority] 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 [F⁶Authority] that arrangements specified under paragraph (11)(b) have not been made by any person within the period so specified, the [F⁶Authority] 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 [F⁷Authority] under this Article shall be paid into the Consolidated Fund.

F1 Word in art. 35 heading substituted (16.12.2020) by [The Gas \(Internal Markets\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/279\)](#), regs. 1, [4\(5\)\(a\)](#)

F2 Word in art. 35(1) substituted (16.12.2020) by [The Gas \(Internal Markets\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/279\)](#), regs. 1, [4\(5\)\(a\)\(i\)](#)

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- F3** Word in art. 35(3)-(6) substituted (16.12.2020) by The Gas (Internal Markets) Regulations (Northern Ireland) 2020 (S.R. 2020/279), regs. 1, 4(5)(a)(ii)
- F4** Words in art. 35(7) substituted (16.12.2020) by The Gas (Internal Markets) Regulations (Northern Ireland) 2020 (S.R. 2020/279), regs. 1, 4(5)(b)
- F5** Word in art. 35(8) substituted (16.12.2020) by The Gas (Internal Markets) Regulations (Northern Ireland) 2020 (S.R. 2020/279), regs. 1, 4(5)(a)(iii)
- F6** Word in art. 35(10)-(12) substituted (16.12.2020) by The Gas (Internal Markets) Regulations (Northern Ireland) 2020 (S.R. 2020/279), regs. 1, 4(5)(a)(iv)
- F7** Word in art. 35(14) substituted (16.12.2020) by The Gas (Internal Markets) Regulations (Northern Ireland) 2020 (S.R. 2020/279), regs. 1, 4(5)(a)(v)

Increase of capacity, etc. of pipe-line

36.—^{F8}(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 [^{F9}Authority], 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 [^{F9}Authority] 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 [^{F10}Authority] considers should be made in consequence of the application;
- (b) specify the sums or the methods of determining the sums which the [^{F10}Authority] considers should be paid to the^{F8} operator by the applicant for the purpose of defraying the cost of the modifications;
- (c) specify the arrangements which the [^{F10}Authority] 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^{F8} operator if he carries out the modifications;
- (d) require the^{F8} 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.

[^{F11}(3) Where the Authority proposes to give directions under paragraph (1), it shall be its duty before doing so to give to the applicant particulars of the modifications which it 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

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under paragraph (1), compliance with any such directions shall be enforceable by civil proceedings by the [F12 Authority] 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.

F8	prosp. subst. by 2003 NI 6
F9	Word in art. 36(1) substituted (16.12.2020) by The Gas (Internal Markets) Regulations (Northern Ireland) 2020 (S.R. 2020/279) , regs. 1, 4(6)(a)(i)
F10	Word in art. 36(2) substituted (16.12.2020) by The Gas (Internal Markets) Regulations (Northern Ireland) 2020 (S.R. 2020/279) , regs. 1, 4(6)(a)(ii)
F11	Art. 36(3) substituted (16.12.2020) by The Gas (Internal Markets) Regulations (Northern Ireland) 2020 (S.R. 2020/279) , regs. 1, 4(6)(b)
F12	Word in art. 36(7) substituted (16.12.2020) by The Gas (Internal Markets) Regulations (Northern Ireland) 2020 (S.R. 2020/279) , regs. 1, 4(6)(a)(iii)

Consent of [F13 Authority] 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 [F14 Authority] granted under this Article; or
 - (b) otherwise than in accordance with the conditions subject to which the consent of the [F14 Authority] 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 [F15 Authority] 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 [F15 Authority].

(4) An applicant for a consent under this Article shall provide the [F15 Authority] with such other information relevant to the application as the [F15 Authority] 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 [F15 Authority] 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 [F15 Authority].

(6) After considering any such representations duly made to [F16 it, the Authority] may grant consent under this Article to the applicant or may refuse such consent.

- (7) A consent granted under this Article—

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- (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 [F17Authority] 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 [F18Authority] 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 [F18Authority] considers should be paid to the applicant by such of the persons who made representations to the [F18Authority] 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 [F18Authority] 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 [F18Authority] that arrangements specified under paragraph (10)(b) have not been made by any person within the period so specified, the [F18Authority] 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 [F19Authority] under this Article shall be paid into the Consolidated Fund.
- [F20(14) In this Article any reference to a “gas storage facility” does not include such a facility (wholly or in part) in, under or over the territorial sea adjacent to Northern Ireland.]

F13 Word in art. 37 heading substituted (16.12.2020) by [The Gas \(Internal Markets\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/279\)](#), regs. 1, [4\(7\)\(a\)](#)

F14 Word in art. 37(1) substituted (16.12.2020) by [The Gas \(Internal Markets\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/279\)](#), regs. 1, [4\(7\)\(a\)\(i\)](#)

F15 Word in art. 37(3)-(5) substituted (16.12.2020) by [The Gas \(Internal Markets\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/279\)](#), regs. 1, [4\(7\)\(a\)\(ii\)](#)

F16 Words in art. 37(6) substituted (16.12.2020) by [The Gas \(Internal Markets\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/279\)](#), regs. 1, [4\(7\)\(b\)](#)

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- F17** Word in art. 37(7) substituted (16.12.2020) by [The Gas \(Internal Markets\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/279\)](#), regs. 1, [4\(7\)\(a\)\(iii\)](#)
- F18** Word in art. 37(9)-(11) substituted (16.12.2020) by [The Gas \(Internal Markets\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/279\)](#), regs. 1, [4\(7\)\(a\)\(iv\)](#)
- F19** Word in art. 37(13) substituted (16.12.2020) by [The Gas \(Internal Markets\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/279\)](#), regs. 1, [4\(7\)\(a\)\(v\)](#)
- F20** Art. 37(14) added (16.12.2020) by [The Gas \(Internal Markets\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/279\)](#), regs. 1, [8](#)

[^{F21}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.

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(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.]

F21 Art. 37A inserted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\)](#), [reg. 29\(1\)](#)

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 [^{F22}Authority], 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 [^{F22}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.

[^{F23}(3) In this Article any reference to a “gas storage facility” does not include such a facility (wholly or in part) in, under or over the territorial sea adjacent to Northern Ireland.]

F22 Word in [art. 38\(1\)](#) substituted (16.12.2020) by [The Gas \(Internal Markets\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/279\)](#), [regs. 1, 4\(8\)](#)

F23 [Art. 38\(3\)](#) added (16.12.2020) by [The Gas \(Internal Markets\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/279\)](#), [regs. 1, 9](#)

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[^{F24}Requirements for major [^{F25}pipe-lines]etc

38A.—(1) A consent under

- (a) Article 35 in relation to the construction of a major [^{F26}pipe-line]; ^{F27} ...
- (b) Article 37 in relation to the construction of a gas storage facility [^{F28}; or]
- [^{F29}(c) Article 37A in relation to the construction of an LNG facility,]

shall not be granted unless the [^{F26}pipe-line] or facility, as the case may be, meets the published criteria and may be granted subject to such conditions as appear to [^{F30}the Authority or the Department (as the case may be)] to be necessary or expedient to ensure that it does so.

(2) Any direction under Article 36 in relation to the modification of a [^{F26}pipe-line] shall not be granted unless the modification meets the published criteria and may be granted subject to such conditions as appear to the Authority to be necessary or expedient to ensure that it does so.

(3) Any direction given under [^{F31}Article 38] in relation to an increase in the capacity of a gas storage facility shall not be granted unless the facility [^{F32}as intended to be modified] meets the published criteria and may be granted subject to such conditions as appear to the Authority to be necessary or expedient to ensure that it does so.

[^{F33}(3A) Any direction under Article 38B in relation to an increase in the capacity of an LNG facility shall not be given unless the facility as intended to be modified meets the published criteria, and may be given subject to such conditions as appear to the Authority to be necessary or expedient to ensure that it does so.]

(4) Where the Authority refuses to grant an application for a consent under Article 35 or 37 or a direction under [^{F34}Article 36, 38 or 38B,] the authority shall by notice in writing—

- (a) inform the person making the application of the fact;
- (b) give him the reasons for that refusal; and
- (c) inform him of any right to challenge the refusal.

[^{F35}(4A) Where the Department refuses to grant an application for a consent under Article 37A it shall by notice in writing—

- (a) inform the person making the application (“the applicant”) of the fact;
- (b) give the applicant the reasons for that refusal; and
- (c) inform the applicant of any right to challenge the refusal.]

[^{F36}(4B) Where the Authority or the Department refuses to grant an application mentioned in paragraph (4) or (4A), the Authority or (as the case may be) the Department shall inform the European Commission by notice in writing of the reasons for the refusal.]

(5) In this Article “published criteria” means [^{F37}objective and non-discriminatory criteria] determined by the Department from time to time ^{F38} ... and published by it.

(6) This Article does not apply in relation to any [^{F39}pipe-line] or facility to which Article 2 of the Commission Decision applies.]

F24 Art. 38A substituted (1.10.2006) by Gas Order 1996 (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/358), reg. 10

F25 Word in art. 38A heading substituted (16.12.2020) by The Gas (Internal Markets) Regulations (Northern Ireland) 2020 (S.R. 2020/279), regs. 1, 6(a)

F26 Word in art. 38A(1)(2) substituted (16.12.2020) by The Gas (Internal Markets) Regulations (Northern Ireland) 2020 (S.R. 2020/279), regs. 1, 5(e)

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- F27** Word in art. 38A(1)(a) omitted (16.12.2020) by virtue of [The Gas \(Internal Markets\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/279\)](#), regs. 1, **10(2)(a)**
- F28** Word in art. 38A(1)(b) substituted (16.12.2020) by [The Gas \(Internal Markets\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/279\)](#), regs. 1, **10(2)(b)**
- F29** Art. 38A(1)(c) inserted (16.12.2020) by [The Gas \(Internal Markets\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/279\)](#), regs. 1, **10(2)(c)**
- F30** Words in art. 38A(1) substituted (16.12.2020) by [The Gas \(Internal Markets\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/279\)](#), regs. 1, **10(2)(d)**
- F31** Words in art. 38A(3) substituted (16.12.2020) by [The Gas \(Internal Markets\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/279\)](#), regs. 1, **10(3)**
- F32** Words in art. 38A(3) inserted (16.12.2020) by [The Gas \(Internal Markets\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/279\)](#), regs. 1, **10(3)**
- F33** Art. 38A(3A) inserted (16.12.2020) by [The Gas \(Internal Markets\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/279\)](#), regs. 1, **10(4)**
- F34** Words in art. 38A(4) substituted (16.12.2020) by [The Gas \(Internal Markets\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/279\)](#), regs. 1, **10(5)**
- F35** Art. 38A(4A) inserted (16.12.2020) by [The Gas \(Internal Markets\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/279\)](#), regs. 1, **10(6)**
- F36** Art. 38A(4B) inserted (temp.) (16.12.2020) by virtue of [The Gas \(Internal Markets\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/279\)](#), regs. 1, **11** (with reg. 18)
- F37** Words in art. 38A(5) substituted (31.12.2020) by [The Electricity and Gas etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/530\)](#), regs. 1(1), **123(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F38** Words in art. 38A(5) omitted (31.12.2020) by virtue of [The Electricity and Gas etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/530\)](#), regs. 1(1), **123(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F39** Word in art. 38A(6) substituted (16.12.2020) by [The Gas \(Internal Markets\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/279\)](#), regs. 1, **5(e)**

[^{F40} **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.]

- F40** Art. 38B inserted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\)](#), **reg. 29(2)**

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—

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- (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

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- (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 [F41sections 450 and 451(1) to (3) of the Corporation Tax Act 2010] shall apply for the purposes of sub-paragraph (b) as they apply for the purposes of [F42Part 10 of that Act].

F41 Words in art. 39(7) substituted (1.4.2010 with effect as mentioned in s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), ss. 1177, 1184(1), Sch. 1 para. 295(2)(a) (subject to Sch. 2)

F42 Words in art. 39(7) substituted (1.4.2010 with effect as mentioned in s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), ss. 1177, 1184(1), Sch. 1 para. 295(2)(b) (subject to Sch. 2)

[F43]39A.—(1) A person who is or expects to be the holder of a licence may apply for any major [F44pipe-line] (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 [F44pipe-line] 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 [F44pipe-line], 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 [F45with provisions corresponding to those set out in 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 [F46pipe-lines] or facilities or the provision of balancing services,

insofar as the requirement relates to any [F44pipe-line] or facility to which an application under paragraph (1) relates.

[
F47(2A) For the purposes of paragraph (2)(b)—

- (a) the reference to Article 32 of the Directive is to be read as a reference to that Article with the modifications set out in Article 10A(4) of this Order;
- (b) the reference to Article 33 of the Directive is to be read as a reference to that Article with the modifications set out in Article 10A(15)(b) of this Order;
- (c) the reference to Article 34 is to be read as a reference to that Article with the following modifications—

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- (i) references to “Member States” are to be read as references to “the Department”;
- (ii) in paragraph (1), the final sentence is to be omitted;
- (iii) in paragraph (2)(d), the reference to “Community law” is to be read as a reference to [F48assimilated] law;
- (iv) paragraph (4) is to be omitted.]

(3) This Article applies to any [F44pipe-line] or facility which is not yet operational and to any modification of a [F44pipe-line] 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.

[F49(4)

(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.

[F50(5A) For the purposes of paragraph (5), Article 36(1) of the Directive is to be read as if in point (e)—

- (a) the reference to the internal market in natural gas were a reference to the market in gas in Northern Ireland; and
- (b) the reference to security of supply of natural gas in the Union were a reference to security of supply of gas in the United Kingdom.

(5B) Before taking a decision under paragraph (5) the Authority shall, if the pipe-line or facility in question originates or ends outside Northern Ireland, consult the relevant authority of any country or territory in which it originates or ends.

(5C) Where the relevant authority consulted does not respond to the consultation within a deadline set by the Authority not exceeding three months or, in the absence of a specified deadline, within a reasonable time, the Authority may take the decision in question.

(5D) In paragraphs (5B) and (5C) “the relevant authority” means any person exercising functions in relation to gas which correspond to any of those of the Authority or the Department.]

(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 [F51pipe-line] or facility to which the application relates or only a specified part thereof;
- (c) terms requiring charges to be imposed on users of the [F51pipe-line] 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 [F51pipe-line] 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 [F51pipe-line] 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).

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(8) In respect of a [^{F51}pipe-line] 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 [^{F51}pipe-line] or facility.

(10) Paragraph (9) does not prevent a further exemption being given in respect of any [^{F51}pipe-line] 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 [^{F51}pipe-line] 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.

F43	Arts. 39A 39B inserted (12.4.2013) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2013 (S.R. 2013/92), reg. 30(1)
F44	Word in art. 39A(1)-(3) substituted (16.12.2020) by The Gas (Internal Markets) Regulations (Northern Ireland) 2020 (S.R. 2020/279), regs. 1, 5(f)
F45	Words in art. 39A(2)(b) substituted (31.12.2020) by The Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/530), regs. 1(1), 124(2); 2020 c. 1, Sch. 5 para. 1(1)
F46	Word in art. 39A(2) substituted (16.12.2020) by The Gas (Internal Markets) Regulations (Northern Ireland) 2020 (S.R. 2020/279), regs. 1, 6(b)
F47	Art. 39A(2A) inserted (31.12.2020) by The Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/530), regs. 1(1), 124(3); 2020 c. 1, Sch. 5 para. 1(1)
F48	Word in art. 39A(2A)(c)(iii) substituted (1.1.2024) by The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) Regulations 2023 (S.I. 2023/1424), reg. 1(2), Sch. para. 38(4)
F49	Art. 39A(4) omitted (31.12.2020) by virtue of The Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/530), regs. 1(1), 124(4); 2020 c. 1, Sch. 5 para. 1(1)
F50	Art. 39A(5A)-(5D) substituted for art. 39A(5A) (31.12.2020) by The Gas (Amendment) (EU Exit) Regulations (Northern Ireland) 2020 (S.R. 2020/305), regs. 1(2), 4(3)
F51	Word in art. 39A(6)-(11) substituted (16.12.2020) by The Gas (Internal Markets) Regulations (Northern Ireland) 2020 (S.R. 2020/279), regs. 1, 5(f)

39B. ^{F52} ...

^{F53}(2)

(3) The Authority must revoke an exemption given in accordance with Article 39A in respect of a [^{F54}pipe-line] 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—

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- (a) if [^{F55}before IP completion day] the European Commission notified the Authority that it approved the exemption and terms as copied to it under paragraph (1) [^{F56}(as it then had effect)], the date of that notification;
- (b) if [^{F57}before IP completion day], 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
- [^{F58}(c) if—
- (i) before IP completion day the Authority sent the European Commission a copy of the exemption and terms under paragraph (1) (as it then had effect), and
- (ii) the European Commission does not act as described in paragraph (a) or (b) before IP completion day,
- the date four months after the Authority sent the European Commission a copy of the exemption under paragraph (1) or IP completion day, whichever is the sooner;
- (d) if the decision to give the exemption was published under Article 39A(12) on or after IP completion day, the date on which the decision was published under Article 39A(12).]
- (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 [^{F59}pipe-line], facility or modification—
- (a) in accordance with the provisions of the exemption; or
- (b) by giving the owner of the [^{F59}pipe-line] or facility in question a notice of a revocation at least 4 months before the revocation takes effect.]

- F43** Arts. 39A 39B inserted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\)](#), **reg. 30(1)**
- F52** Art. 39B(1) omitted (31.12.2020) by virtue of [The Electricity and Gas etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/530\)](#), regs. 1(1), **125(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F53** Art. 39B(2) omitted (31.12.2020) by virtue of [The Electricity and Gas etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/530\)](#), regs. 1(1), **125(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F54** Word in art. 39B(3) substituted (16.12.2020) by [The Gas \(Internal Markets\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/279\)](#), regs. 1, **5(g)**
- F55** Words in art. 39B(4)(a) inserted (31.12.2020) by [The Electricity and Gas etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/530\)](#), regs. 1(1), **125(3)(a)(i)** (as amended by S.I. 2020/1016, regs. 1(2), 3(40)); 2020 c. 1, Sch. 5 para. 1(1)
- F56** Words in art. 39B(4)(a) inserted (31.12.2020) by [The Electricity and Gas etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/530\)](#), regs. 1(1), **125(3)(a)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)
- F57** Words in art. 39B(4)(b) inserted (31.12.2020) by [The Electricity and Gas etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/530\)](#), regs. 1(1), **125(3)(b)** (as amended by S.I. 2020/1016, regs. 1(2), 3(40)); 2020 c. 1, Sch. 5 para. 1(1)
- F58** Art. 39B(4)(c)(d) substituted for art. 39B(4)(c) (31.12.2020) by [The Electricity and Gas etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/530\)](#), regs. 1(1), **125(3)(c)** (as amended by S.I. 2020/1016, regs. 1(2), 3(40)); 2020 c. 1, Sch. 5 para. 1(1)
- F59** Word in art. 39B(5) substituted (16.12.2020) by [The Gas \(Internal Markets\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/279\)](#), regs. 1, **5(g)**

Changes to legislation:

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Changes and effects yet to be applied to :

- Instrument am. (pt.prosp.) by [1998 c. 41 s.66\(5\)Sch.10 Pt.III para.8](#)
- Instrument amended by [1998 c. 41 s.66\(5\)Sch.10 Pt.V para.18](#)
- Instrument rev. in pt. (prosp.) by [1998 c. 41 ss.66\(5\),74\(3\), Sch.10, Pt.V, para.18, Sch.14, Pt.II](#)

Changes and effects yet to be applied to the whole Order associated Parts and Chapters:

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- art. 18(1A)(aa) inserted by S.I. 2019/93, Sch. 1 para. 7(2)(b) (as substituted) by [S.I. 2019/1245 reg. 24](#) (This amendment not applied to [legislation.gov.uk](#). The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)