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## STATUTORY INSTRUMENTS

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# 1996 No. 275 (N.I. 2)

## The Gas (Northern Ireland) Order 1996

- - - - - 14th February 1996

### PART I INTRODUCTORY

#### Citation and commencement

- 1.—(1) This Order may be cited as the Gas (Northern Ireland) Order 1996.
- (2) This Order shall come into operation on such day or days as the Head of the Department may by order appoint<sup>F1</sup>.
- (3) An order under paragraph (2) may contain such transitional or saving provisions as appear to the Head of the Department to be necessary or expedient.

<b>F1</b> fully exercised by SR 1996/216
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#### Interpretation # general

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“construction”, in relation to a pipe-line, includes placing;

“the Department” means the Department of Economic Development;

*Definition rep. by 2003 NI 6*

“government department” means a department of the Government of the United Kingdom or a Northern Ireland department;

“modifications” includes additions, omissions, amendments and substitutions;

“notice” means notice in writing;

“pipe-line” means a pipe (together with any apparatus and works associated therewith), or system of pipes (together with any apparatus and works associated therewith) for the conveyance of gas, not being—

- (a) a pipe or system of pipes constituting or comprised in apparatus for heating or cooling or for domestic purposes; or

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- (b) a pipe or system of pipes wholly situated—
- (i) within the site of any apparatus or works to which certain provisions of the Factories Act (Northern Ireland) 1965 apply by virtue of section 125(1) of that Act (building operations and works of engineering construction);
  - (ii) within the boundaries of any land occupied as a unit for purposes of agriculture (within the meaning of the Agriculture Act (Northern Ireland) 1949), where the pipe or system of pipes is designed for use for purposes of agriculture; or
  - (iii) in premises used for the purposes of education or research;

“premises” includes any land, building or structure;

“prescribed” means prescribed by regulations;

“regulations” (except in Articles 22, 35 and 37) means regulations made by the Department;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

(3) For the purposes of this Order the following apparatus and works, and no other, shall be treated as being associated with a pipe, or system of pipes, namely,—

- (a) apparatus for inducing or facilitating the flow of gas through, or through a part of, the pipe or system;
- (b) valves, valve chambers, manholes, inspection pits and similar works, being works annexed to, or incorporated in the course of, the pipe or system;
- (c) apparatus for supplying energy for the operation of any such apparatus or works as are mentioned in sub-paragraph (a) or (b);
- (d) apparatus for the transmission of information for the operation of the pipe or system;
- (e) apparatus for affording cathodic protection to the pipe or system;
- (f) a structure for the exclusive support of a part of the pipe or system.

(4) For the purposes of this Order the length of a pipe-line shall be taken to be the total length of pipe comprised in it; but where, in a system of pipes, a number of adjacent parallel lengths of pipe serve the same purpose as would be served by a single pipe of a diameter greater than that of any of those lengths, that number shall be taken to constitute a single pipe.

(5) For the purposes of this Order the execution of works in land for the purpose of determining whether or not it is suitable for the placing in it of a pipe-line and the carrying out of surveying operations for the purpose of settling the route of a proposed pipe-line shall be deemed not to constitute the execution of works for the construction of a pipe-line.

## PART II

### GAS SUPPLY AND ASSOCIATED ACTIVITIES

#### *Interpretation*

#### **Interpretation of Part II**

3.—(1) In this Part—

“the 1973 Act” means the Fair Trading Act 1973;

“the 1980 Act” means the Competition Act 1980;

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[<sup>F2</sup>“the 2011 Regulations” means The Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011;]

[<sup>F3</sup>“the Commission Decision” means Commission Decision PH (2005) 0791 granting a derogation from certain provisions of Directive 2003/55/EC of the European Parliament and of the Council in respect of Northern Ireland;]

[<sup>F4</sup>“the Directive” means European Parliament and Council Directive 2009/73/EC concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC;]

“exemption” means an exemption under Article 7;

“gas plant” includes any plant, equipment, pipe-line or apparatus used for, or for purposes connected with, the conveyance, storage or supply of gas;

“gas storage facility” means any facility [<sup>F5</sup>(other than a facility in, under or over the territorial sea adjacent to Northern Ireland)] designed or adapted for the storage of gas in bulk (whether in a liquid state or not), not being a pipe or other conduit for the conveyance of gas;

“the General Consumer Council” means the General Consumer Council for Northern Ireland;

“information” includes accounts, estimates and returns;

[<sup>F6</sup>“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;]

“licence” means a licence granted under Article 8;

“licence holder” means the holder of a licence granted under Article 8;

“the Monopolies Commission” means the Monopolies and Mergers Commission [<sup>F7</sup>;

[<sup>F8</sup>“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;]

[<sup>F9</sup>“vertically integrated undertaking” has the meaning given in Article 2(20) of the Directive.]

(2) In this Part “gas” means any substance which is in a gaseous state at a temperature of 15°C and a pressure of 1013.25 millibars and—

- (a) consists wholly or mainly of methane; or
- (b) is specified in an order made by the Department; or
- (c) consists wholly or mainly of—
  - (i) a mixture of two or more substances falling within sub-paragraph (a) or (b); or
  - (ii) a combustible mixture of one or more such substances and air.

(3) This Part applies only in relation to gas supplied, or intended to be supplied, through pipes; and references in this Part to gas shall be construed accordingly.

- |           |                                                                                                                                                                                                   |
|-----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>F2</b> | <a href="#">Art. 3: definition of "the 2011 regulations" inserted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), reg. 85(c)</a>       |
| <b>F3</b> | <a href="#">Art. 3: definition of "the Commission Decision" substituted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), reg. 85(b)</a> |
| <b>F4</b> | <a href="#">Art. 3: definition of "the Directive" substituted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), reg. 85(a)</a>           |

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- F5** Art. 3(1): words in definition of "gas storage facility" inserted (13.11.2009 for certain purposes, otherwise prosp.) by [Energy Act 2008 \(c. 32\), ss. 36, 110\(2\), Sch. 1 para. 5; S.I. 2009/2809, art. 2\(1\)\(b\)](#) (subject to [art. 2\(2\)\(3\)](#))
- F6** Art. 3(1): definitions of "LNG" and "LNG facility" inserted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\), reg. 12\(a\)](#)
- F7** Art. 3(1): in the definition of "the Monopolies Commission" at the end "semicolon" substituted for "full stop"(12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\), reg. 12\(b\)](#)
- F8** Art. 3(1): definition of "operate" inserted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\), reg. 12\(b\)](#)
- F9** Art. 3: definition of "vertically integrated undertaking" inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\), reg. 85\(c\)](#)

*Arts. 4#5 rep. by 2003 NI 6*

### *Licensing of supply of gas and associated activities*

#### **Prohibition on unlicensed supply of gas and associated activities**

- 6.—(1) Subject to Article 7, a person who—
- conveys gas from one place to another;
  - stores gas in a gas storage facility; <sup>F10</sup> . . .
  - supplies gas to any other person or to any premises [<sup>F11</sup>; or]
  - <sup>F12</sup> operates an LNG facility,]

shall be guilty of an offence unless he is authorised to do so by a licence.

- (2) A person guilty of an offence under this Article shall be liable—
- on summary conviction, to a fine not exceeding the statutory maximum;
  - on conviction on indictment, to a fine.

(3) No proceedings shall be instituted in respect of an offence under this Article except by or on behalf of the Department or the Director.

[<sup>F13</sup>(6) For the purposes of this Order a person stores gas in a gas storage facility if (and only if) that person is the operator of that facility.]

- F10** Word in [art. 6\(1\)\(b\)](#) deleted (12.4.2013) by virtue of [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\), reg. 13](#)
- F11** Words in [art. 6\(1\)\(c\)](#) substituted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\), reg. 13](#)
- F12** [Art. 6\(1\)\(d\)](#) inserted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\), reg. 13](#)
- F13** [Art. 6\(6\)](#) added (21.3.2011) by [Energy Act \(Northern Ireland\) 2011 \(c. 6\), ss. 15, 36\(1\); S.R. 2011/95, art. 2](#)

#### **Exemptions from Article 6**

7.—(1) The Department may, after consultation with the Director, by order grant exemption from sub-paragraph (a), (b) [<sup>F14</sup>, (c) or (d)] of Article 6(1)—

- either to a person or to persons of a class;

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- (b) either generally or to such extent as may be specified in the order; and
- (c) either unconditionally or subject to such conditions as may be so specified.

(2) An exemption granted to persons of a class, and the revocation of such an exemption, shall be published in such manner as the Department considers appropriate for bringing it to the attention of persons likely to be affected.

(3) An exemption, unless previously revoked in accordance with any term contained in the exemption, shall continue in operation for such period as may be specified in or determined by or under the exemption.

(4) Without prejudice to the generality of paragraph (1)(c), conditions included by virtue of that sub-paragraph in an exemption may require any person carrying on any activity in pursuance of the exemption—

- (a) to comply with any direction given by the Department or the Director as to such matters as are specified in the exemption or are of a description so specified;
- (b) except in so far as the Department or the Director consents to his doing or not doing them, not to do or to do such things as are specified in the exemption or are of a description so specified; and
- (c) to refer for determination by the Department or the Director such questions arising under the exemption as are specified in the exemption or are of a description so specified.

[<sup>F15</sup>(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.]

(5) If any condition of an exemption granted to persons of a class is not complied with by any person of that class, the Department may give to that person a direction declaring that the exemption is revoked, so far as relating to that person, to such extent and as from such date as may be specified in the direction.

**F14** Words in art. 7(1) substituted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\)](#), **reg. 14**

**F15** Art. 7(4A)(4B) inserted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\)](#), **reg. 15**

## [<sup>F16</sup>**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

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- (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.

**F16** Arts. 7A-7D inserted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\)](#), [reg. 16](#)

- 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

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- (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).

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**F16** Arts. 7A-7D inserted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\)](#), **reg. 16**

**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.

**F16** Arts. 7A-7D inserted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\)](#), **reg. 16**

**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;



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“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;
- (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.]

**F16** Arts. 7A-7D inserted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\)](#), **reg. 16**

### **Licences authorising supply, etc.**

8.—(1) The [<sup>F17</sup>Authority] may grant a licence authorising any person to do all or any of the following, namely—

- (a) to convey gas from one place to another in an area authorised by the licence;
- (b) to store gas in a specified gas storage facility;
- (c) to supply gas to specified persons or premises [<sup>F18</sup>;

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[<sup>F19</sup>(d) to operate an LNG facility.]

In this paragraph and paragraph (2) “specified” means specified in the licence, or of a class or description, or in an area, so specified.

(2) The [<sup>F20</sup>Authority] may—

- (a) extend a licence granted under paragraph (1) (a) or (c) by increasing the area authorised by the licence; or
- (b) extend a licence granted under paragraph (1)(b) by adding to the specified gas storage facilities;
- (c) extend a licence granted under paragraph (1)(c) by adding to the specified persons or premises [<sup>F21</sup>];

[<sup>F22</sup>(d) extend a licence granted under paragraph (1)(d) by adding to the specified LNG facility.]

(3) An application for a licence or extension shall be made in the prescribed manner and shall be accompanied by such fee (if any) as may be prescribed; and within 14 days from the making of such an application, the applicant shall publish a copy of the application in the prescribed manner.

(4) Before granting a licence or extension under this Article, [<sup>F23</sup>the Authority] shall give notice—

- (a) stating that [<sup>F24</sup>the Authority] proposes to grant the licence or extension;
- (b) stating the reasons why it is proposed to grant the licence or extension; and
- (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed licence or extension may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

[<sup>F25</sup>(4A) A licence shall not be granted or extended unless the applicant therefor and, if appropriate, the construction or operation of any pipeline, facility or associated apparatus used or to be used in connection with any activity carried out under the licence meets the published criteria.]

(5) A licence or extension shall be in writing and, unless previously revoked in accordance with any term contained in it, a licence shall continue in force for such period as may be specified in or determined by or under the licence.

(6) As soon as practicable after granting or extending a licence, [<sup>F26</sup>the Authority] shall give notice stating that the licence or extension has been granted.

(7) A notice under paragraph (4) or (6) shall be given by publishing the notice in such manner as [<sup>F27</sup>the Authority] considers appropriate for bringing it to the attention of persons likely to be affected by the grant or extension of the licence.

[<sup>F28</sup>(7A) Where <sup>F29</sup> . . . the Authority refuses to grant to any applicant a licence or an extension, the <sup>F29</sup> . . . Authority <sup>F30</sup> . . . 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.

(7B) In paragraph (4A) “published criteria” means the criteria determined by the Department from time to time for the purposes of and in accordance with—

- (a) Article 4(2) of the Directive; or
- (b) in relation to the construction or operation of a direct line (within the meaning of the Directive), [<sup>F31</sup>Article 38(2)] of the Directive,

and published by it.

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(7C) Paragraph (4A) shall not apply in relation to any—

- (a) direct line used for a supply of gas to which Article 1 of the Commission Decision for the time being applies; or
- (b) direct line, pipeline or facility used for a supply of gas to which Article 2 of the Commission Decision for the time being applies.]

(8) Neither the requirement to consult imposed by paragraph (1) nor paragraphs (3) and (4) shall apply to the granting of any licences which are granted in the period of 3 months beginning with the day on which this Article comes into operation.

(9) Any sums received by the Director under this Article shall be paid into the Consolidated Fund.

- F17** Words in art. 8(1) substituted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 58**
- F18** Art. 8(1)(c): "semicolon" substituted for "full stop" (12.4.2013) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2013 (S.R. 2013/92), **reg. 17(1)**
- F19** Art. 8(1)(d) added (12.4.2013) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2013 (S.R. 2013/92), **reg. 17(1)**
- F20** Words in art. 8(2) substituted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 58**
- F21** Art. 8(2): "semicolon" substituted for "full stop" (12.4.2013) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2013 (S.R. 2013/92), **reg. 17(2)**
- F22** Art. 8(2)(d) added (12.4.2013) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2013 (S.R. 2013/92), **reg. 17(2)**
- F23** Words in art. 8(4) substituted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 59(a)**
- F24** Words in art. 8(4)(a) substituted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 59(b)**
- F25** Art. 8(4A) inserted (1.10.2006) by Gas Order 1996 (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/358), **reg. 5(1)**
- F26** Words in art. 8(6) substituted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 60**
- F27** Words in art. 8(7) substituted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 61**
- F28** Art. 8(7A) - (7C) inserted (1.10.2006) by Gas Order 1996 (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/358), **reg. 5(2)**
- F29** Words in art. 8(7A) omitted (15.4.2011) by virtue of Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 62**
- F30** Words in art. 8(7A) omitted (15.4.2011) by virtue of Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 62**
- F31** Words in art. 8(7B)(b) substituted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 86**

PROSPECTIVE

#### **[<sup>F32</sup>Licences under Article 8(1)(a)**

**8A.—(1)** A licence under Article 8(1)(a) may authorise the holder to participate in the conveyance of gas in any area, or only in an area specified in the licence.

(2) The Authority may, with the consent of the holder of a licence under Article 8(1)(a), modify any term included in the licence in pursuance of paragraph (1).

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(3) Conditions included in a licence under Article 8(1)(a) by virtue of Article 10(1)(a) may (without prejudice to the generality of that sub-paragraph)—

- (a) require the licence holder not to carry on an activity which he would otherwise be authorised by the licence to carry on; or
- (b) restrict where he may carry on an activity which he is authorised by the licence to carry on.]

**F32** Art. 8A inserted (prosp.) by [Energy \(Northern Ireland\) Order 2003 \(S.I. 2003/419 \(N.I. 6\)\)](#), **arts. 1(2), 30(5)**

### <sup>F33</sup>**The conveyance of gas: requirement to be certified as independent**

**8B.**—(1) A person who conveys gas through a gas transmission pipe-line and holds a licence under Article 8(1)(a) immediately before the coming into operation of the 2011 Regulations must, on and after the relevant date, ensure that he is certified at all times when he acts under the authority of that licence.

(2) Any person who intends to convey gas through a gas transmission pipe-line and who is granted a licence under Article 8(1)(a) after the coming into operation of the 2011 Regulations must ensure that he is certified at all times when he acts under the authority of the licence.

(3) In paragraph (1) the “relevant date” in respect of a person is 3rd March 2012 or any later date before 4th March 2013 which the Authority specifies under paragraph (4) or (5) in respect of that person.

(4) The Authority may specify a later date in respect of a person if—

- (a) the person has asked the Authority to specify a later date;
- (b) the person is not, and is not part of, a vertically integrated undertaking; and
- (c) no senior officer of the person is also a senior officer of a relevant producer or supplier.

(5) The Authority may also specify a later date in respect of a person if the Authority decides that, for reasons beyond its and the person's control, the Authority will not reasonably be able to make a final decision before 3rd March 2012 as to whether or not to certify the person.

(6) For the purposes of this Article, a person conveys gas through a gas transmission pipe-line where he—

- (a) makes a gas transmission pipe-line available for use for the purposes of the conveyance of gas; or
- (b) makes such a pipe-line available and coordinates and directs the flow of gas into and through such pipe-line.

**F33** Arts. 8B-8L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 12**

### **Application for certification**

**8C.**—(1) An application for certification must be made—

- (a) in writing to the Authority; and
- (b) before such date and in such form and contain such information as the Authority may specify in writing.

(2) If the application is made on or after 3rd March 2013 and either—

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- (a) the applicant is; or
- (b) the application is made on the basis of the third certification ground under Article 8F(5) and the applicant nominates as an independent system operator,

a person from a third country or a person controlled by a person from a third country, the Authority must notify the Department and the European Commission as soon as is reasonably practicable.

(3) The Authority may request from an applicant for certification any further information the Authority thinks is relevant to the application, and the applicant must supply that information if—

- (a) it is in the applicant's possession or control; or
- (b) it is information which the applicant could reasonably be expected to obtain.

(4) The Authority may request a relevant producer or supplier, and any related conveyance licensee, for any information the Authority considers relevant to an application for certification, and the person so requested must supply that information if—

- (a) it is in his possession or control; or
- (b) it is information which he could reasonably be expected to obtain.

(5) A person requested to supply information under paragraph (3) or (4) must do so by the date specified by the Authority in the request.

**F33** Arts. 8B-8L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), [reg. 12](#)

### **Report where applicant connected with a country outside the European Economic Area**

**8D.**—(1) This Article applies if the Department is notified by the Authority under Article 8C(2) that an application has been made by, or nominating as an independent system operator, a person from a third country or a person controlled by a person from a third country.

(2) The Department must prepare a report on whether the security of gas supplies in the United Kingdom and the European Economic Area would be put at risk by the certification of the applicant.

(3) In preparing the report, the Department must take into account—

- (a) any relevant international law; and
- (b) any relevant agreement between the government of the United Kingdom and the government of the third country in question.

(4) The Department must send the report to the Authority within the 6 weeks beginning with the day on which the notification under Article 8C(2) is received by it.

**F33** Arts. 8B-8L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), [reg. 12](#)

### **Certification**

**8E.**—(1) The Authority must, within the 4 months beginning with the day on which it receives an application for certification, make a preliminary decision as to whether it should certify the applicant.

(2) If—

- (a) the Authority has asked an applicant or a relevant producer or supplier or related conveyance licensee for information under Article 8C(3) or (4); and
- (b) the information has not been supplied by the date specified by the Authority under Article 8C(5),

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then the period of 4 months referred to in paragraph (1) shall be extended by the period of delay in supplying such information.

(3) As soon as is reasonably practicable after making the preliminary decision under paragraph (1), the Authority must notify the decision and the reasons for it to—

- (a) the applicant;
- (b) any related conveyance licensee;
- (c) the Department; and
- (d) the European Commission.

(4) The Authority must enclose with the notification under paragraph (3)(a), (b) or (d) a copy of any report which the Department has prepared under Article 8D in respect of the applicant and which the Authority receives before giving the notification.

(5) Article 3 of the Gas Regulation sets out the obligation to make a final decision, together with related processes, time limits, matters to be taken into account and conditions.

(6) As soon as is reasonably practicable after making the final decision in any case the Authority must notify the decision and the reasons for it to—

- (a) the applicant;
- (b) any related conveyance licensee;
- (c) the Department; and
- (d) the European Commission.

**F33** Arts. 8B-8L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), [reg. 12](#)

## Grounds for certification

**8F.**—(1) This Article applies to—

- (a) a preliminary decision under Article 8E as to whether an applicant should be certified;
- (b) a final decision under Article 3 of the Gas Regulation as to whether to certify an applicant.

(2) Subject to paragraph (7), the Authority may only decide that the applicant should be certified, or decide to certify the applicant, if one of the following four grounds (“the certification grounds”) applies.

(3) The first certification ground is that the ownership unbundling requirement in Article 8G is met in relation to the applicant and to any related conveyance licensee.

(4) The second certification ground is that—

- (a) the applicant has applied for a derogation from the ownership unbundling requirement on the grounds in paragraphs (1) and (2) of Article 14 of the Directive (independent system operator);
- (b) the applicant has nominated an independent system operator for designation in accordance with those paragraphs; and
- (c) the Authority—
  - (i) has determined that the requirements of those paragraphs and of paragraphs (1) and (2) of Article 15 of the Directive (unbundling of transmission system owners and storage system operators) are met; and
  - (ii) is minded to designate the nominated independent system operator.

(5) The third certification ground is that—

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- (a) the applicant holds a licence under Article 8(1)(a);
  - (b) the applicant has applied for a derogation from the ownership unbundling requirement on the grounds in Chapter IV of the Directive (independent transmission operator); and
  - (c) the Authority has determined that the requirements of that Chapter are met.
- (6) The fourth certification ground is that the applicant has been granted an exemption (effective by virtue of the conditions which apply in his licence, or by way of exemption under Article 7(1)) in accordance with Article 36 of the Directive (new infrastructure) and remains entitled to the benefit of it.
- (7) The Authority may make a preliminary decision to certify an applicant where it is satisfied that the certification ground to which his application relates applies in the case of the applicant or would apply if particular qualification measures were taken and that—
- (a) those qualification measures are within the powers of the Authority to impose under regulations 13 and 94 of the 2011 Regulations or any other powers of the Authority under this Order or the Energy (Northern Ireland) Order 2003, and the Authority is minded so to exercise those powers; or
  - (b) the Authority is otherwise satisfied that such qualification measures will be taken.
- (8) But, regardless of whether a certification ground applies under paragraph (2), the Authority must not certify the applicant—
- (a) if, on the basis of an opinion expressed by the European Commission under Article 11 of the Directive (certification in relation to persons from countries outside the European Economic Area), the Authority considers that the certification of the applicant would put at risk the security of gas supplies in the European Economic Area;
  - (b) if a report prepared by the Department under Article 8D states that the certification of the applicant would put at risk the security of gas supplies in the United Kingdom or the European Economic Area.

**F33** Arts. 8B-8L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), [reg. 12](#)

### **The ownership unbundling requirement**

[<sup>F33</sup>8G.—(1) For the purposes of Article 8F(3), the ownership unbundling requirement is met by an applicant for certification or (as the case may be) a related conveyance licensee (“a relevant person”) if the Authority considers that each of the following five tests is passed.

- (2) The first test is that the relevant person—
- (a) does not control a relevant producer or supplier;
  - (b) does not have a majority shareholding in a relevant producer or supplier; and
  - (c) will not, on or after the relevant date (within the meaning of Article 8B(3)) exercise any shareholder rights it holds, or becomes the holder of, in relation to a relevant producer or supplier.
- (3) For the purposes of paragraph (2)(c), the Authority is entitled to think that the relevant person will not exercise any shareholder rights it holds, or becomes the holder of, if the relevant person has given an undertaking that it will not exercise those shareholder rights.
- (4) The second test is that the relevant person is not controlled by a person who controls a relevant producer or supplier.
- (5) But even where the second test is not passed, the Authority is entitled to treat it as passed if—

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- (a) the control over the relevant person was gained through the exercise of a right conferred as a condition of the provision of financial support or a guarantee in relation to the relevant person's business; or
  - (b) the control over the relevant producer or supplier was gained through the exercise of such a right conferred in relation to the business of the relevant producer or supplier.
- (6) The third test is that the relevant person is not controlled by a person who has a majority shareholding in a relevant producer or supplier.
- (7) But even where the third test is not passed, the Authority is entitled to treat it as passed if—
- (a) the control over the relevant person was gained through the exercise of a right conferred as a condition of the provision of financial support or a guarantee in relation to the relevant person's business; or
  - (b) the majority shareholding in the relevant producer or supplier was gained through the exercise of such a right conferred in relation to the business of the relevant producer or supplier.
- (8) Where the Authority treats the second or third test as having been passed only by virtue of paragraph (5) or (7), it must specify a time limit after which it will cease to treat that test as having been passed; and it may extend the time limit if it thinks it necessary or expedient to do so.
- (9) Paragraphs (10) and (11) apply where the Authority is entitled to treat the second or third test as having been passed only by virtue of paragraph (5) or (7).
- (10) In deciding whether to treat the test as having been passed, the Authority—
- (a) must take into account—
    - (i) whether the relationship (direct or indirect) between the relevant person and the relevant producer or supplier has led or might lead the relevant person to discriminate in favour of the relevant producer or supplier; and
    - (ii) the length of time for which that is likely to continue to be so; and
  - (b) may, in particular take into account any information or undertakings given to the Authority by the relevant person, the relevant producer or supplier or the person who controls the relevant person and controls or has a majority shareholding in the relevant producer or supplier.
- (11) The information and undertakings that may be taken into account under paragraph (10) (b) include information and undertakings regarding any measures that have been or will be put in place to ensure the effective separation of the business of the relevant person and the business of the relevant producer or supplier.
- (12) The fourth test is that, where the relevant person is a company, partnership or other business, none of its senior officers has been, or may be, appointed by a person who—
- (a) controls a relevant producer or supplier other than an electricity generation undertaking or electricity supply undertaking; or
  - (b) has a majority shareholding in a relevant producer or supplier other than an electricity generation undertaking or electricity supply undertaking.
- (13) The fifth test is that, where the relevant person is a company, partnership or other business, none of its senior officers is also a senior officer of a relevant producer or supplier other than an electricity generation undertaking or electricity supply undertaking.]

**F33** Arts. 8B-8L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 12**



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## Designation for the purposes of EU gas legislation

**8H.**—(1) This Article applies for any period during which a person—

- (a) holds a licence under Article 8(1)(a); and
- (b) is certified.

(2) If the person is certified on the first or third certification ground in Article 8F, the Department shall designate that person as a gas transmission system operator for the purposes of Article 10(2) of the Directive (designation of transmission system operators).

(3) If the person is certified on the second certification ground in Article 8F, the Department shall designate the independent system operator nominated in the application for certification as a gas transmission system operator for the purposes of that Article.

(4) As soon as is reasonably practicable after a person is designated by virtue of this Article, the Department must give notice of the designation to—

- (a) the person so designated;
- (b) the applicant (if different);
- (c) the Authority; and
- (d) the European Commission.

(5) Where, in the case of a person certified on the first certification ground, there is a related conveyance licensee, conditions included pursuant to Article 10A(1) in the licences under Article 8(1)(a) of the certified person and the related conveyance licensee may make provision for determining which of them is to act as transmission system operator for the purposes of any provision of the Gas Regulation and any designation under this Article is without prejudice to any such provision.

**F33** Arts. 8B-8L inserted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), reg. 12

## Monitoring and review of certification

**[<sup>F33</sup>8I.**—(1) The Authority must monitor, in respect of each certified person, whether the grounds on which the person was certified continue to apply.

(2) Where, for the purposes of certifying any person, the Authority has treated the second or third test in Article 8G as having been passed only by virtue of paragraph (5) or (7) of that Article, then where after the expiry of the time limit provided under paragraph (8) of that Article it has ceased to treat that test as having been passed by such virtue, the certification shall be withdrawn unless the Authority reviews the certification and is satisfied that the test in question is otherwise passed.

(3) If, on or after 3rd March 2013, as a result of information it has received or obtained, the Authority considers that a person from a third country has taken or may take control of a certified person or a person designated as independent system operator, the Authority must, as soon as is reasonably practicable, notify the information to the Department and the European Commission.

(4) The Authority may review the final certification for any person if—

- (a) the certified person or any related conveyance licensee notifies it of any event or circumstance which may affect the grounds on which that person was certified; or
- (b) for any other reason the Authority considers that the grounds for the certification of that person may no longer apply.

(5) A review under paragraph (2) or (4) is to be carried out within the 4 months beginning with—

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- (a) if paragraph (4)(a) applies, the day on which the Authority receives the notification under that paragraph;
  - (b) if the review is in pursuance of paragraph (2), the expiry of the time limit referred to in that paragraph; or
  - (c) otherwise, the first day on which the Authority considers that the grounds for certification may no longer apply.
- (6) The Authority must also review a final certification if the European Commission asks it to do so.
- (7) A review under paragraph (6) is to be carried out within the 4 months beginning with the day on which the Authority receives the request from the European Commission.
- (8) But where the Authority considers that the circumstances giving rise to the review of the certification of any person under paragraph (4) or (6) represent or result from the contravention of a relevant condition or requirement for the purposes of Article 41 of the Energy (Northern Ireland) Order 2003, by a related conveyance licensee, the Authority may suspend the carrying out of the review while the Authority is taking steps in relation to such contravention pursuant to Part VI of that Order and during any period allowed to the related conveyance licensee for complying with any enforcement order.
- (9) As soon as is reasonably practicable after beginning a review under this Article, the Authority must notify the certified person to whom the review relates and any related conveyance licensee that the review is being carried out and the reasons for it.
- (10) The Authority may ask the certified person for any information the Authority thinks is relevant to the review, and the person must supply the information if—
- (a) it is in the certified person's possession or control; or
  - (b) it is information which the certified person could reasonably be expected to obtain.
- (11) The Authority may ask a relevant producer or supplier or related conveyance licensee for any information the Authority thinks is relevant to a review under this Article, and the relevant producer or supplier or related conveyance licensee must supply that information if—
- (a) it is in the possession or control of the relevant producer or supplier or related conveyance licensee; or
  - (b) it is information which the relevant producer or supplier or related conveyance licensee could reasonably be expected to obtain.
- (12) A person required to supply information under paragraph (10) or (11) must do so by any deadline specified by the Authority in the request.]

**F33** Arts. 8B-8L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), [reg. 12](#)

### **Report as to any connection of a certified person with a country outside the European Economic Area**

**8J.**—(1) This Article applies if the Department is notified by the Authority under Article 8I(3) that a person from a third country has taken or may take control of a certified person or (in relation to a certified person) a person designated as an independent system operator.

(2) The Department must prepare a report on whether the security of gas supplies in the United Kingdom and the European Economic Area would be put at risk by the continued certification of the person.

(3) In preparing the report, the Department must take into account—

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- (a) any relevant international law; and
  - (b) any relevant agreement between the government of the United Kingdom and the government of the third country in question.
- (4) The Department must prepare the report and send it to the Authority within the 6 weeks beginning with the day on which the notification is received.

**F33** Arts. 8B-8L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), [reg. 12](#)

### Continuation or withdrawal of certification

**8K.**—(1) Where the Authority reviews under Article 8I whether the grounds for the certification of a person apply or continue to apply, it may, within the review period, make a preliminary decision that either—

- (a) the certification should be continued on the certification ground in question; or
- (b) the certification should be withdrawn.

(2) If the Authority does not make a decision under paragraph (1) within the review period, it is to be taken as having decided at the end of the review period that the certification should be continued on the certification ground in question.

(3) As soon as is reasonably practicable after a preliminary decision is made (or taken to be made) under this Article, the Authority must—

- (a) notify the European Commission of the decision; and
- (b) enclose the information it considers relevant to the decision.

(4) Article 3 of the Gas Regulation sets out an obligation to make a final review decision, together with related processes, time limits, matters to be taken into account and conditions.

(5) Paragraphs (6) to (8) apply in relation to the Authority's final decision under Article 3 of the Gas Regulation whether or not to confirm the certification.

(6) As soon as is reasonably practicable after making the final decision, the Authority must notify the decision and the reasons for it to—

- (a) the person in relation to whom the review was carried out;
- (b) any related conveyance licensee;
- (c) the Department; and
- (d) the European Commission.

(7) If the final decision is to continue the certification the person in question is to be taken as continuing to be certified by the Authority.

(8) Otherwise, the person is to be taken as no longer certified.

(9) Article 8F(8)(a) and (b) applies in relation to a decision mentioned in this Article as it applies in relation to a decision mentioned in Article 8F(1), but as if the reference in Article 8F(8)(b) to a report under Article 8D were a reference to a report under Article 8J.]

**F33** Arts. 8B-8L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), [reg. 12](#)

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## Interpretation

[<sup>F33</sup>8L.—(1) In Articles 8B to 8K and this Article—

“certification ground” shall be construed in accordance with Article 8F(2);

“certified” means, in relation to any person, certified in accordance with Article 8E or continued to be certified in accordance with Article 8K;

“control”, in relation to one person having control over another, has the meaning given in Article 2(36) of the Directive, but in determining whether one person (“person A”) controls another person (“person B”) no account is to be taken of any power to exercise a contractual or other right which would give person A decisive influence over person B where the right was conferred as a condition of the provision of any financial support or guarantee by person A in relation to the business of person B; and references to one person controlling another are to be interpreted accordingly;

“electricity generation undertaking” means a person who generates electricity for the purpose of giving a supply to any premises or enabling a supply to be so given;

“electricity supply undertaking” means a person who supplies electricity to any premises;

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

“gas supply undertaking” means a person who sells gas to one or more customers, including by the supply to any premises of gas which has been conveyed to those premises through pipes;

“the Gas Regulation” means Regulation (EC) No. 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No. 1775/2005;

“gas transmission pipe-line” means a gas pipe-line used for the purposes of transmission within the meaning of the Directive;

“licence” means—

- (a) in relation to an electricity generation undertaking or an electricity supply undertaking, a licence under Article 10(1)(a) or (c) of the Electricity (Northern Ireland) Order 1992; and
- (b) in relation to a gas supply undertaking, a licence under Article 8(1)(c);

“majority shareholding” means a simple majority of shares;

“person from a third country” means any person the Authority thinks is a person from a third country;

“qualification measures” in relation to an applicant for certification, means measures taken or arrangements made to ensure that the certification ground to which his application relates applies in his case;

“related conveyance licensee” means, in relation to an applicant for certification or a certified person, any other person (including a person nominated or designated as independent system operator for the purposes of the second certification ground) who—

- (a) holds; or
- (b) in the case of an applicant for certification would, pursuant to any qualification measures proposed in the application, hold, a licence under Article 8(1)(a) under which that person co-ordinates, and directs, the flow of gas into and through a gas transmission pipe-line of the applicant or certified person;

“review period” in relation to a review under Article 8I, means the period specified in paragraph (5) or (7) of that Article as extended by any period of suspension under paragraph (8) of that Article;

“senior officer” means—

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- (a) in relation to a company, a director;
- (b) in relation to a partnership, a partner;
- (c) in relation to any other business, a person holding a position equivalent to that of a director or partner;

“shareholder right”, in relation to a company, means a right conferred by the holding of a share in the company’s share capital—

- (a) to vote at general meetings of the company; or
- (b) to appoint or remove a member of the company’s board of directors;

“third country” means a country that is not, and is not part of, a European Economic Area state.

(2) In Articles 8B to 8K and this Article, “relevant producer or supplier”, in relation to an applicant for certification or a certified person, means—

- (a) an electricity generation undertaking, an electricity supply undertaking or a gas supply undertaking which meets the requirements of paragraph (3); or
- (b) a gas producer which meets the requirements of paragraph (4).

(3) An undertaking mentioned in paragraph (2)(a) meets the requirements of this paragraph if it carries out its generation or supply activity in a European Economic Area state and it—

- (a) requires a licence or similar authority to do so;
- (b) would, in the Authority’s opinion, require a licence to do so if it carried out the activity in Northern Ireland; or
- (c) has a relationship with the applicant or certified person which the Authority thinks might lead the applicant or certified person to discriminate in favour of it.

(4) A gas producer meets the requirements of this paragraph if it—

- (a) carries out its production activity in a European Economic Area state; and
- (b) has a relationship with the applicant or certified person which the Authority thinks might lead the applicant or certified person to discriminate in favour of it.]

**F33** Arts. 8B-8L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), [reg. 12](#)

### **Exclusive licences under Article 8(1)(a) or (c)**

**9.—(1)** A licence granted under Article 8(1)(a) or (c) may, if the grantor having regard to the duties imposed by<sup>F34</sup> Article 14 of the Energy (Northern Ireland) Order 2003] considers it appropriate, confer on the holder of the licence, for a period specified in the licence, exclusive authority to carry on designated activities.

<sup>F35</sup>(1A) The period specified in a licence under paragraph (1) shall, in relation to any designated activities, expire—

- (a) where the activities are designated by reference to a class or description of activities, not later than the twentieth anniversary of the commencement of any of those activities under the licence; and
- (b) where the activities are designated by reference to an area, not later than the twentieth anniversary of the first supply of gas to customers in the area.]

(2) In this Article, in relation to a licence—

“designated activities” means such of the activities authorised by the licence as are designated in the licence for the purposes of this Article, and activities may be so designated by reference

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to a class or description of activities or by reference to any area in which they are authorised to be carried on by the licence;

“specified period” means the period specified in the licence under paragraph (1) or substituted for that period under paragraph (5)(a) or (7)(a).

(3) [<sup>F36</sup>Subject to Article 9A, where a licence] granted under Article 8(1)(a) or (c) confers on the holder exclusive authority to carry on designated activities, no other licence shall be granted under Article 8(1)(a) or (c) so as to authorise any other person to carry on any such designated activities in the specified period.

(4) Conditions included under Article 10(1)(a) in a licence conferring on the holder exclusive authority to carry on any designated activities may make special provision in relation to the carrying on of such activities within the specified period.

(5) Where the grantor is satisfied on reasonable grounds that the holder of a licence conferring exclusive authority to carry on designated activities has contravened any relevant condition of his licence, the grantor may modify the licence—

- (a) so as to substitute for the specified period such shorter period as the grantor may determine;
- (b) so as to exclude from those activities which are designated activities for the purposes of this Article such activities as the grantor may determine; or
- (c) so as to remove from the licence those provisions which confer exclusive authority to carry on designated activities.

(6) In paragraph (5) “relevant condition” means a condition of the licence (whether one included by virtue of paragraph (4) or not) which is identified in the licence as a relevant condition for the purposes of this Article.

[<sup>F37</sup>(7) The grantor may, with the consent of the holder of a licence conferring exclusive authority to carry on designated activities, modify the licence—

- (a) so as to substitute for the specified period such longer period as the grantor may determine;
- (b) so as to add to those activities which are designated activities for the purposes of this Article such other activities as the grantor may determine.

(7A) The grantor may not under paragraph (7)(a) substitute a longer period than that allowed under paragraph (1A) unless the grantor is satisfied that it is necessary or expedient to do so in the interests of the efficient operation of the designated activities.]

(8) Before making any modifications under paragraph (5) or (7) the grantor shall give notice—

- (a) stating that the grantor proposes to make the modifications and setting out their effect;
- (b) stating the reasons why the grantor proposes to make the modifications; and
- (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are so made and not withdrawn.

(9) A notice under paragraph (8) shall be given—

- (a) by publishing the notice in such manner as the grantor considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
- (b) by sending a copy of the notice to the holder of the licence.

**F34** 2003 NI 6

**F35** Art. 9(1A) substituted (1.10.2006) by Gas Order 1996 (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/358), reg. 6(1)

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- F36** Words in art. 9(3) substituted (1.10.2006) by virtue of [Gas Order 1996 \(Amendment\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/358\)](#), **reg. 6(2)**
- F37** Art. 9(7)(7A) substituted (1.10.2006) by [Gas Order 1996 \(Amendment\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/358\)](#), **reg. 6(3)**

### **[<sup>F38</sup>Limitation of rights under exclusive licences**

**9A.** The prohibition in Article 9(3) shall not apply to the grant by the Department or the Authority of a licence under Article 8(1)(c) authorising the holder to supply a customer—

- (a) who is described in [<sup>F39</sup>Article 38(1)] of the Directive and in respect of whom the derogation in relation to that Article under the Commission Decision does not apply; and
- (b) where the gas is supplied and conveyed through a direct line.]

- F38** Art. 9A substituted (1.10.2006) by [Gas Order 1996 \(Amendment\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/358\)](#), **reg. 7**
- F39** "In Article 9A(1)(a)" words substituted (15.4.2011) by virtue of [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 87**

### **Conditions of licences**

**10.**—(1) A licence may include—

- (a) such conditions (whether or not relating to the activities authorised by the licence) as appear to the grantor to be requisite or expedient having regard to the duties imposed by [<sup>F40</sup>Article 14 of the Energy (Northern Ireland) Order 2003]; and
- (b) conditions requiring the rendering to the grantor of a payment on the grant of the licence, or payments during the currency of the licence, or both, of such amount or amounts as may be determined by or under the licence.

(2) Without prejudice to the generality of paragraph (1)(a), conditions included in a licence by virtue of that sub-paragraph—

- (a) may require the licence holder to enter into agreements with other persons for the use of any gas plant [<sup>F40</sup> owned, leased or operated by him] (wherever situated and whether or not used for the purpose of carrying on the activities authorised by the licence) for such purposes as may be specified in the conditions; and
- (b) may include provision for determining the terms on which such agreements are to be entered into.

(3) [<sup>F40</sup>Without prejudice to the generality of paragraph (1)(a), conditions included in a licence by virtue of that sub-paragraph] may require the licence holder—

- (a) to comply with any direction given by the Department or the Director as to such matters as are specified in the licence or are of a description so specified;
- (b) except in so far as the Department or the Director consents to his doing or not doing them, not to do or to do such things as are specified in the licence or are of a description so specified;
- (c) to refer for determination by the Department or the Director such questions arising under the licence [<sup>F40</sup>, or under any document referred to in the licence,] as are specified in the licence or are of a description so specified;

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- (d) to refer for approval by the Department or the Director such things falling to be done under the licence, and such arrangements, contracts or agreements made before the grant of the licence, as are specified in the licence or are of a description so specified; and
  - (e) to provide the Department or the Director with, or publish, such information relating to the activities authorised by the licence as appear to the Department or the Director to be requisite or expedient having regard to the duties imposed by<sup>[F40]</sup> Article 14 of the Energy (Northern Ireland) Order 2003].
- <sup>[F40]</sup>(3A) Conditions included in a licence Article 8(1)(a) by virtue of paragraph (1)(a) may require the holder, in such circumstances as are specified in the licence—
- (a) so to increase his charges in connection with the conveyance of gas as to raise such amounts as may be determined by or under the conditions; and
  - (b) to pay the amounts so raised to such persons as may be so determined.]
- (4) Conditions included in a licence under paragraph (1)(a) may—
- (a) instead of specifying or describing any arrangements, contracts or agreements to which they apply, refer to arrangements, contracts or agreements designated (whether before or after the imposition of the conditions) by the Department or the Director; and
  - (b) instead of containing any provisions which fall to be made, refer to provisions set out in documents so designated and direct that those provisions shall have such effect as may be specified in the conditions.
- <sup>[F40]</sup>(5) Conditions included in a licence may contain provision for the conditions—
- (a) to have effect or cease to have effect at such times and in such circumstances as may be determined by or under the conditions; or
  - (b) to be modified in such manner as may be specified in the conditions at such times and in such circumstances as may be so determined.]
- (6) Any provision included under paragraph (5) in a licence shall have effect in addition to the provision made by this Part with respect to the modification of the conditions of a licence.
- <sup>[F40]</sup>(6A) Conditions included in a licence may provide for references in the conditions to any document to operate as references to that document as revised or re-issued from time to time.]
- (7) Any sums received by the Director in consequence of any condition of a licence shall be paid into the Consolidated Fund.

**F40** 2003 NI 6

### Compliance with Community obligations

<sup>[F41]</sup>**10A.**—(1) Without prejudice to the generality of Article 10(1), a licence shall include such conditions as appear to the grantor to be necessary or expedient having regard to the requirements and prohibitions laid down in the Directive.

- (2) The conditions included in a licence in accordance with paragraph (1) shall, in particular—
  - (a) ensure that the licence holder and, if appropriate, any activity authorised by the licence and the construction or operation of any pipe-line, facility or associated apparatus used in connection with that activity meets the published criteria referred to in Article 8(7B);
  - (b) require the licence holder to develop and publish the technical safety criteria and rules required by Article 8 of the Directive;
  - (c) 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



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shall confer on the Department and the Authority a right of access to the licence holder's accounts for the purpose of ensuring compliance with those requirements.

(3) The conditions included in a licence in accordance with paragraph (1) shall, in particular, in the case of a licence under Article 8(1)(a) ensure that the holder does not disclose or abuse information contrary to Article 16 or 27 of the Directive and shall, having regard to the activities authorised by the licence, require the holder—

- (a) where he balances gas inputs to and offtakes from any pipe-line used under the licence, to adopt and follow rules which comply with the relevant requirements of Articles 13(3) and 25(5) of the Directive;
- (b) to comply with the requirements of Article 13(5) of the Directive in procuring the energy used in the carrying out of his functions;
- (c) where appropriate to carry out the tasks laid down for him by Article 25(1) of the Directive;
- (d) to refrain from discriminating between persons using or intending to use any pipe-line, facility or associated apparatus operated for the purposes of the licence, contrary to Article 25(2) of the Directive;
- (e) to provide such persons with the information required by Article 25(4) of the Directive;
- (f) to provide any other licence holder mentioned in Article 25(3) of the Directive with the information required by that provision;
- (g) 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);
- (h) to take any measures necessary for the purpose of complying with Article 16(3) of the Directive;
- (i) to facilitate (to the extent within his control) the ability of customers to change suppliers within 3 weeks, as required by Article 3(6)(a) of the Directive; and
- (j) to facilitate (to the extent within his control) the ability of customers to have access to consumption data, as required by Article 3(6)(b) of, and items (h) and (i) of paragraph 1 of Annex I to, the Directive.

(4) The conditions included in a licence in accordance with paragraph (1) shall, in particular, in the case of a licence under Article 8(1)(a)—

- (a) provide for the Authority to approve in advance of their coming into operation any terms and conditions—
  - (i) for the connection and access to any pipe-line, facility or associated apparatus operated by the holder for the purposes of the licence including but not limited to the tariffs, or the method for determining the tariffs, for such connection or access; and
  - (ii) for the provision of any balancing services; and
- (b) provide that where the licence holder enters into a contract directly with a household customer for the provision to that customer of services under the licence, or makes arrangements in pursuance of which a household customer enters into a contract with another person for a supply of gas to that customer, then to the extent that this is within the licence holder's control—
  - (i) the terms and conditions of any such contract complies with items (a) and (d) of paragraph 1 of Annex I to the Directive; and
  - (ii) the requirements of items (b), (c), (d) and (g) of paragraph 1 of Annex I to the Directive are complied with in relation to the customer.

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(5) The conditions included in a licence in accordance with paragraph (1) shall, in particular, in the case of a licence under Article 8(1)(a) granted to a person forming part of a vertically integrated undertaking—

- (a) <sup>F42</sup> . . . require that person to continue to comply with the requirements referred to in that provision for independence in terms of his legal form, organisation and decision-making in relation to his activities under the licence and to comply with the requirements laid down by Article 26(2) of the Directive for independence in terms of its organisation and decision making, in particular the minimum criteria laid down thereby and to comply with the requirements applying to such person laid down by Article 26(3) of the Directive; and
- (b) who carries on the combination of activities to which Article 29 of the Directive applies, require that person to comply with the requirements laid down by that provision for independence in terms of its legal form, organisation and decision-making in relation to its activities under the licence [<sup>F43</sup>; and]

[<sup>F44</sup>(c) to which Article 7(4) of the Directive applies, require that person to comply with the requirements of that paragraph.]

[<sup>F45</sup>(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.]

(6) The conditions included in a licence in accordance with paragraph (1) shall, in particular, in the case of a licence under Article 8(1)(a)—

- (a) where the holder, or a person who holds a licence under Article 8(1)(a) in relation to whom the holder is a related conveyance licensee, is certified under the first certification ground in Article 8F, require that the ownership unbundling requirement in Article 8G continues to be met in relation to the holder;
- (b) where the holder is certified under the second certification ground in Article 8F or is designated as independent system operator for the purposes of that certification ground—
  - (i) require that the requirements in Articles 14(1) and (2) and 15(1) and (2) of the Directive which are relevant to the holder continue to be met; and
  - (ii) require that the requirements in [<sup>F46</sup>Article 14(4) or 14(5)] of the Directive which are relevant to the holder continue to be met;
- (c) where the holder is certified under the third certification ground in Article 8F, require that the requirements in Chapter IV of the Directive are met; and
- (d) require the holder to notify the Authority if any of the other conditions referred to in this paragraph ceases or is likely to cease to be met.

(7) The conditions included in a licence in accordance with paragraph (1) shall, in particular, in the case of a licence under Article 8(1)(a) granted to a person to whom Article 9(1) of the Directive applies, as appropriate having regard to the activities authorised by the licence, require the holder to carry out the tasks laid down for him by Article 13(1) of the Directive.

(8) The conditions included in a licence in accordance with paragraph (1) shall, in particular, in the case of a licence under Article 8(1)(b) 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) to comply with the requirements for access to storage laid down by Article 33 of the Directive in accordance with criteria published by the Authority for the purposes of paragraph (1) of that Article; and

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- (c) where the person forms part of a vertically integrated undertaking, to comply with the requirements laid down in Article 15 of the Directive for independence in terms of its legal form, organisation and decision-making in relation to its activities under the licence and, in particular, to comply with the minimum criteria laid down by Article 15(2) of the Directive.
- (9) The conditions included in a licence in accordance with paragraph (1) shall, in particular, in the case of a licence under Article 8(1)(c)—
- (a) require the introduction and maintenance of safeguards to help any consumers referred to in Article 14(3) of the Energy (Northern Ireland) Order 2003 and individuals who are consumers in rural areas in particular to avoid disconnection from the gas pipe-line system;
  - (b) ensure that consumers of gas have access to the information (including information about the contractual terms and conditions offered to such consumers) required by Article 3(3) of the Directive;
  - (c) ensure that any person who is an eligible customer for the purposes of Article 37 of the Directive (as read with Article 2 of the Commission Decision) can exercise his freedom to purchase gas from the supplier of his choice within the meaning of that Article;
  - (d) ensure that persons exercising that freedom are not charged therefor in compliance with paragraph 1(e) of Annex I to the Directive, and are able to use procedures which comply with paragraph 1(f) of Annex I to the Directive;
  - (e) require that information provided to consumers of gas (including information about the contractual terms and conditions offered to such consumers) by the holder of such a licence are sufficiently transparent to enable the consumer to exercise that freedom;
  - (f) make provision for customers wishing to change suppliers to be able to do so within 3 weeks, as required by Article 3(6)(a) and Article 3(3) of the Directive;
  - (g) ensure that customers have consumption data at their disposal and are able to give access to that data to other suppliers, as required by Article 3(6)(b) of, and items (h) and (i) of paragraph 1 of Annex I to, the Directive;
  - (h) ensure that customers have access to information about sources of energy efficiency advice, as required by Article 3(4) and 3(8) of the Directive;
  - (i) require that the holder of the licence provides its customers with a copy of the guidance, which is to be published by the Authority pursuant to Article 7(5) of the Energy (Northern Ireland) Order 2003, as required by Article 3(12) of the Directive;
  - (j) ensure that household customers are offered a wide choice of payment methods, which do not unduly discriminate between customers, as required by paragraph 1(d) of Annex I to the Directive;
  - (k) ensure that the terms and conditions of supply contracts offered by the licence holder to household customers comply with items (a) and (d) of paragraph 1 of Annex I to the Directive;
  - (l) make provision for customers to be protected from unfair or misleading selling methods, as required by paragraph 1(d) of Annex I to the Directive;
  - (m) ensure that household customers receive a final bill following changing suppliers within the time frame required by paragraph 1(j) of Annex I to the Directive; and
  - (n) ensure that the holder of the licence maintains the records required by Article 44 of the Directive.
- [<sup>F47</sup>(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

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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).]]

- F41 Art. 10A substituted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 15**
- F42 Words in art. 10A(5)(a) deleted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\)](#), **reg. 18(1)**
- F43 Words in art. 10A(5) substituted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\)](#), **reg. 18(2)**
- F44 Art. 10A(5)(c) inserted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\)](#), **reg. 18(2)**
- F45 Art. 10A5(A) inserted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\)](#), **reg. 18(1)**
- F46 Words in art. 10A(6)(b)(ii) substituted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\)](#), **reg. 18(3)**
- F47 Art. 10A(10) inserted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\)](#), **reg. 18(4)**

VALID FROM 25/07/2014

#### [<sup>F48</sup>Licensing and Energy Efficiency

**10AA.—**(1) Without prejudice to the generality of Article 10(1), a licence shall include such conditions as appear to the grantor to be requisite or expedient to ensure that any activity authorised by it is carried out in compliance with the relevant requirements and prohibitions laid down by the Energy Efficiency Directive and referred to in the following paragraphs.

(2) Subject to paragraph (5) the conditions included in a licence in accordance with paragraph (1) shall in particular in the case of a licence under Article 8(1)(c) include such conditions as appear to the grantor to be requisite or expedient to require, where a customer of the licence holder takes a supply of gas through a smart meter, that the licence holder ensures that—

- (a) the meter complies with the relevant requirements of Article 9(2)(a) and 10(2) and, where the customer so requests, Article 9(2)(c) of the Energy Efficiency Directive;
- (b) the customer is provided with the information required by Article 9(2)(a) and 10(2) of the Energy Efficiency Directive;
- (c) the information required by Article 10(2)(b) of the Energy Efficiency Directive is provided in the format so required;
- (d) where the customer so requests, the customer or another person acting on the customer's behalf is provided with the information required by Article 9(2)(d) of the Energy Efficiency Directive in the format so required;
- (e) the meter and any information provided by it is secure as required by Article 9(2)(b) of the Energy Efficiency Directive; and

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- (f) the advice and information required by Article 9(2)(e) of the Energy Efficiency Directive is provided to the customer.
- (3) The conditions included in a licence in accordance with paragraph (1) shall in particular in the case of a licence under Article 8(1)(c) also include such conditions as appear to the grantor to be requisite or expedient to require, where a customer of the licence holder does not take a supply of gas through a smart meter, that the licence holder ensures that any bill or statement of account provided to the customer complies with the requirements of Article 8(1) of and paragraph 1.1 of Annex VII to the Energy Efficiency Directive.
- (4) The conditions included in a licence in accordance with paragraph (1) shall, in the case of a licence under Article 8(1)(c) also require that the licence holder ensures that—
- (a) the information required by Article 10(3)(a) of the Energy Efficiency Directive is provided, where it is available and the customer to whom it relates so requests, to an energy service provider designated by the customer;
  - (b) any bill or statement of account sent to a customer—
    - (i) contains the information required by Article 10(3)(c) of and paragraph 1.2 and 1.3 of Annex VII to the Energy Efficiency Directive;
    - (ii) complies with the guidance issued and published by the Authority, in particular for the purposes referred to in Article 10(3)(d) of the Energy Efficiency Directive; and
    - (iii) if the customer so requests, is in an electronic format;
  - (c) where a customer so requests, the information required by Article 10(3)(b) of the Energy Efficiency Directive is provided to the customer;
  - (d) any customer taking a supply of gas from the licence holder is provided with the information required by paragraph 1.3 of Annex VII to the Energy Efficiency Directive;
  - (e) any information provided to a customer in accordance with any conditions included under this paragraph is provided in a timely manner and in an easily understandable format for the purposes referred to in Article 10(3)(e) of the Energy Efficiency Directive; and
  - (f) a charge is not made in respect of any bill or statement of account sent by a customer or in respect of any information provided to the customer (whether in the bill or statement of account or otherwise) contrary to Article 11(1) of the Energy Efficiency Directive.
- (5) The duty on the Authority in paragraph (2) to include conditions in a licence shall only have effect where the Department—
- (a) has determined that it is technically possible, financially reasonable and proportionate in relation to the potential energy savings to implement a programme for the widespread provision of smart meters; and
  - (b) notifies the Authority in writing to that effect.
- (6) In this Article—
- (a) “the Energy Efficiency Directive” means the European Parliament and Council Directive 2012/27/EU on energy efficiency, amending Directive 2009/125/EC and 2010/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC;
  - (b) “smart meter” means—
    - (i) a gas meter which can send and receive information using an electronic communications network; or

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- (ii) a gas meter and a device which is associated with or ancillary to that meter and which enables information to be sent and received by the meter using an electronic communication network;
- (c) “electronic communication” has the same meaning as Section 4(1) of the Electronic Communications Act (Northern Ireland) 2001; and
- (d) other expressions which are also used in the Energy Efficiency Directive shall have the same meaning as in that Directive.]

**F48** Art. 10AA inserted (25.7.2014) by [Energy Efficiency Regulations \(Northern Ireland\) 2014 \(S.R. 2014/198\)](#), **reg. 10**

#### [<sup>F49</sup>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;

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- (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.]

**F49** Art. 10B inserted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\)](#), [reg. 19](#)

### Standard conditions of licences

**11.**—(1) Such conditions as may be determined by the Department, and published by it in such manner as it considers appropriate, in relation to licences under sub-paragraph (a), (b) <sup>[F50]</sup>, (c) or (d) of Article 8(1) shall be standard conditions for the purposes of licences under that sub-paragraph.

<sup>[F51]</sup>(1A) The standard conditions for the purposes of licences under sub-paragraph (a), (b) <sup>[F52]</sup>, (c) or (d) of Article 8(1) may contain provision—

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- (a) for any standard condition included in such a licence not to have effect until brought into operation in such manner and in such circumstances as may be specified in or determined under the standard conditions;
- (b) for the effect of any standard condition included in such a licence to be suspended in such manner, and in such circumstances, as may be so specified or determined; or
- (c) for any standard condition included in such a licence which is for the time being suspended to be brought back into operation in such manner and in such circumstances as may be so specified or determined.]

(2) Subject to [F53 Article 14(1)(aa)] and Articles 14(2), 17(2) and 18(2)[F51 and to Article 60(5) of the Energy (Northern Ireland) Order 2003], each condition which by virtue of paragraph (1) is a standard condition for the purposes of licences under sub-paragraph (a), (b) [F54, (c) or (d)] of Article 8(1) shall be incorporated (that is to say, incorporated by reference) in each licence under that sub-paragraph.

(3) F55 .....

(4) The modification under [F56 Article 14(1)(aa)] of a condition of a licence shall not prevent so much of the condition as is not modified being regarded as a standard condition for the purposes of this Part.

<b>F50</b>	Words in art. 11(1) substituted (12.4.2013) by <a href="#">Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2013 (S.R. 2013/92)</a> , <b>reg. 20</b>
<b>F51</b>	2003 NI 6
<b>F52</b>	Words in art. 11(1A) substituted (12.4.2013) by <a href="#">Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2013 (S.R. 2013/92)</a> , <b>reg. 20</b>
<b>F53</b>	Words in art. 11(2) substituted (15.4.2011) by <a href="#">Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155)</a> , <b>reg. 63</b>
<b>F54</b>	Words in art. 11(2) substituted (12.4.2013) by <a href="#">Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2013 (S.R. 2013/92)</a> , <b>reg. 20</b>
<b>F55</b>	Art. 11(3) omitted (15.4.2011) by virtue of <a href="#">Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155)</a> , <b>reg. 64</b>
<b>F56</b>	Words in art. 11(4) substituted (15.4.2011) by <a href="#">Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155)</a> , <b>reg. 65</b>

**Assignment of licences**

- 12.—(1) A licence shall be capable of being assigned either generally or—
- (a) in the case of a licence under Article 8(1)(a), so far as relating to the whole or any part of an authorised area;
  - (b) in the case of a licence under Article 8(1)(b), so far as relating to any specified gas storage facility;
  - (c) in the case of a licence under Article 8(1)(c), so far as relating to any specified persons or premises [F57;]
  - [F58(d) in the case of a licence under Article 8(1)(d), so far as relating to any specified LNG facility,]

but only if it includes a condition authorising such assignment.  
 In this paragraph “specified” means specified in the licence, or of a class or description, or in an area, so specified.

- (2) A licence shall not be capable of being assigned except with the consent of the Director.



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(3) In deciding whether to give his consent under paragraph (2), the Director shall apply the same criteria as he would apply if—

- (a) in the case of a general assignment, he were deciding whether to grant a corresponding licence to the assignee;
- (b) in the case of any other assignment, he were deciding whether—
  - (i) to grant to the assignee a licence corresponding to so much of the licence as is proposed to be assigned; and
  - (ii) to grant to the assignor a licence corresponding to so much of the licence as is proposed to be retained.

(4) Subject to paragraph (5), a consent under paragraph (2) may be given subject to compliance with—

- (a) such modification or other conditions as the Director considers necessary or expedient for the purpose of protecting the interests of consumers; and
- (b) such incidental or consequential modification conditions as he considers necessary or expedient.

(5) The Director shall give the Department not less than 28 days' notice of any proposal of his to impose a modification condition; and if, before the expiry of the time specified in the notice, the Department directs the Director not to impose the condition, the Director shall comply with the direction.

(6) A licence may include conditions which must be complied with before the licence can be assigned.

(7) An assignment, or purported assignment, of a licence shall be void—

- (a) if the licence is not capable of assignment;
- (b) if the assignment, or purported assignment, is in breach of a condition of the licence; or
- (c) if there has, before the assignment or purported assignment, been a contravention of a condition subject to compliance with which the consent required by paragraph (2) is given.

(8) A licence shall not be capable of being assigned under any other provision of this Part.

(9) In this Article—

“assignment” includes any form of transfer;

“modification condition” means a condition requiring or otherwise providing for the making of modifications to the conditions of a licence;

and the reference in this paragraph to a licence includes (where applicable) a reference to so much of a licence as is retained by an assignor.

**F57** Art. 12(1)(c): "semicolon" substituted for "comma" (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\)](#), **reg. 21**

**F58** Art. 12(1)(d) inserted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\)](#), **reg. 21**

## **Powers of licence holders**

**13.**—(1) Subject to paragraph (2)—

- (a) Schedule 2 (which makes provision with respect to the compulsory acquisition of land); and
- (b) Schedule 3 (which confers other powers in relation to land and makes other provision),

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shall, to the extent that his licence so provides, have effect in relation to the holder of a licence under Article 8(1)(a) [<sup>F59</sup>, (b) or (d)]; and references in those Schedules to a licence holder shall be construed accordingly.

(2) Where any provision of either of the Schedules mentioned in paragraph (1) is applied to a licence holder by his licence, it shall have effect subject to such restrictions, exceptions and conditions as may be included in the licence for the purpose of qualifying that provision as so applied or any power or right conferred by or under it.

**F59** Words in art. 13(1) substituted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\)](#), [reg. 22](#)

### *Modification of licences*

#### **Modification by agreement**

14.—(1) Subject to the following provisions of this Article, the Director may—

- (a) modify the conditions of a particular licence; <sup>F60</sup> . . .
- [<sup>F61</sup>(aa) in granting a licence, modify any of the standard conditions to such extent as the Authority considers requisite to meet the circumstances of the particular case; or]
- (b) modify the standard conditions of licences under sub-paragraph (a), (b) [<sup>F62</sup>, (c) or (d)] of Article 8(1).

(2) Where at any time the Director modifies under paragraph (1)(b) the standard conditions of licences under sub-paragraph (a), (b) [<sup>F63</sup>, (c) or (d)] of Article 8(1), he—

- (a) shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences under that sub-paragraph granted after that time; and
- (b) may make such incidental or consequential modifications as he considers necessary or expedient of any conditions of licences under that sub-paragraph granted before that time.

(3) Before making modifications under this Article, the Director shall give notice—

- (a) stating that he proposes to make the modifications and setting out their effect;
- (b) stating the reasons why he proposes to make the modifications; and
- (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(4) A notice under paragraph (3) shall be given—

- (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
- (b) by sending a copy of the notice to the holder of the licence or, as the case may be, the relevant licence holders and to the Department.

(5) If, within the time specified in the notice under paragraph (3), the Department directs the Director not to make any modification, the Director shall comply with the direction.

(6) The Director shall not make any modifications under paragraph (1)(a) unless—

- (a) the holder of the licence has consented to the modifications; and

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(b) in the case of standard conditions of a licence, the Director is of the opinion that the modifications—

- (i) are requisite to meet the circumstances of the particular case; and
- (ii) are such that no other licence holder would be unduly disadvantaged in competing with other licence holders (including the holder of the licence).

[<sup>F64</sup>(6A) The modification under paragraph (1)(a) of part of a standard condition of a licence shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.]

(7) The Director shall not make any modifications under paragraph (1)(b) unless—

- (a) the percentage given by each of paragraphs (8) and (9) is not less than 90 per cent;
- (b) the percentage given by paragraph (8) is not less than 90 per cent and no relevant activities have been carried on by relevant licence holders; or
- (c) paragraph (10) applies.

(8) The percentage given by this paragraph is the fraction given by the following formula expressed as a percentage, namely—

$$\frac{C}{C+N}$$

where—

C = the number of consenting holders;

N = the number of non-consenting holders.

(9) The percentage given by this paragraph is the fraction given by the following formula expressed as a percentage, namely—

$$\frac{C}{C+N}$$

where—

C = the volume of gas to which relevant activities carried on by consenting holders relate;

N = the volume of gas to which relevant activities carried on by non-consenting holders relate, as estimated (in each case) by the Director on the basis of the information available to him.

(10) This paragraph applies where the Director is of the opinion—

- (a) that the effect of the standard conditions is such as to impose a burden affecting relevant licence holders in the carrying on of activities to which the modifications relate;
- (b) that the modifications would remove or reduce the burden without removing any necessary protection; and
- (c) that the modifications are such that no relevant licence holder would be unduly disadvantaged in competing with other relevant licence holders.

(11) Where at any time the Director modifies standard conditions under paragraph (2)(a) for the purposes of their incorporation in licences under sub-paragraph (a), (b) [<sup>F65</sup>, (c) or (d)] of Article 8(1) granted after that time, he shall publish the modifications in such manner as he considers appropriate.

(12) In this Article, in relation to modifications of standard conditions under paragraph (1)(b)—

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“consenting holder” means a relevant licence holder who has consented to the modifications;  
 “non-consenting holder” means a relevant licence holder who has not so consented;  
 “relevant activity” means an activity to which the modifications relate and which is carried on in the period of 12 months immediately preceding the making of the modifications;  
 “relevant licence holder” means a licence holder whose licence incorporates the standard conditions.

(13) The Department may by order substitute for the percentage for the time being specified in paragraph (7)(a) and (b) such other percentage as the Department thinks fit.

- F60** Word in art. 14(1) omitted (15.4.2011) by virtue of [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 66**
- F61** Art. 14(1)(aa) inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 66**
- F62** Words in art. 14(1)(b) substituted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\)](#), **reg. 23**
- F63** Words in art. 14(2) substituted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\)](#), **reg. 23**
- F64** 2003 NI 6
- F65** Words in art. 14(11) substituted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\)](#), **reg. 23**

VALID FROM 06/02/2015

**[<sup>F66</sup>Modification of conditions under Article 14: supplementary**

**14A.**—(1) Paragraphs (2) and (3) apply where at any time the Authority modifies the conditions of licences of any type under Article 14.

(2) If the conditions modified are standard conditions, the Authority must—

- (a) also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time, and
- (b) publish the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by the making of the modifications.

(3) The Authority may make such incidental or consequential modifications of any conditions of licences of any type as it considers necessary or expedient.

(4) The modification of part of a standard condition of a particular licence under Article 14 does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.

(5) The modification of a condition of a licence under this Article has effect subject to the giving of a direction under paragraph 2 of Schedule 3A in relation to the decision to which the modification relates.]

- F66** [Arts. 14-14G](#) substituted (6.2.2015) for art. 14 by [Gas and Electricity Licence Modification and Appeals Regulations \(Northern Ireland\) 2015 \(S.R. 2015/1\)](#), **reg. 3(1)** (with reg. 5)

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## Modification references to Monopolies Commission

15.—(1) The Director may make to the<sup>[F67]</sup> Competition Commission] a reference which is so framed as to require the Commission to investigate and report on the questions—

- (a) whether any matters which—
  - (i) relate to the carrying on of activities authorised or<sup>[F68]</sup> regulated] by a particular licence; and
  - (ii) are specified in the reference, operate, or may be expected to operate, against the public interest; and
- (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the relevant conditions, that is to say, the conditions of the licence.

(2) The Director may make to the<sup>[F67]</sup> Competition Commission] a reference which is so framed as to require the Commission to investigate and report on the questions—

- (a) whether any matters which—
  - (i) relate to the carrying on of activities authorised or<sup>[F68]</sup> regulated] by licences under sub-paragraph (a), (b) <sup>[F69]</sup>, (c) or (d)] of Article 8(1); and
  - (ii) are specified in the reference, operate, or may be expected to operate, against the public interest; and
- (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the relevant conditions, that is to say, the standard conditions of licences under that sub-paragraph.

(3) The Director may, at any time, by notice given to the<sup>[F67]</sup> Competition Commission] vary a reference under this Article by adding to the matters specified in the reference or by excluding from the reference some or all of the matters so specified; and on receipt of any such notice the Commission shall give effect to the variation.

(4) The Director may specify in a reference under this Article, or a variation of such a reference, for the purpose of assisting the<sup>[F67]</sup> Competition Commission] in carrying out the investigation on the reference—

- (a) any effects adverse to the public interest which, in his opinion, the matters specified in the reference or variation have or may be expected to have; and
- (b) any modifications of the relevant conditions by which, in his opinion, those effects could be remedied or prevented.

(5) As soon as practicable after making a reference under this Article or a variation of such a reference, the Director—

- (a) shall serve a copy of the reference or variation on the licence holder or, as the case may be, the relevant licence holders; and
- (b) shall publish particulars of the reference or variation in such manner as he considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it.

(6) The Director shall also send a copy of a reference under paragraph (2), or a variation of such a reference, to the Department; and if, before the end of the period of 28 days from the day on which the Department receives the copy of the reference or variation, the Department directs the<sup>[F67]</sup> Competition Commission] not to proceed with the reference or, as the case may require, not to give effect to the variation, the Commission shall comply with the direction.

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(7) It shall be the duty of the Director, for the purpose of assisting the<sup>F67</sup> Competition Commission] in carrying out an investigation on a reference under this Article<sup>F68</sup> or in carrying out functions under Article 17A], to give to the Commission—

- (a) any information in his possession which relates to matters falling within the scope of the investigation<sup>F68</sup> or the carrying out of those functions] and—
  - (i) is requested by the Commission for that purpose; or
  - (ii) is information which, in his opinion, it would be appropriate for that purpose to give to the Commission without any such request; and
- (b) any other assistance which the Commission may require, and which it is within his power to give, in relation to any such matters;

and the Commission, for the purpose of carrying out any such investigation<sup>F68</sup> or such functions], shall take account of any information given to them for that purpose under this paragraph.

(8) In determining for the purposes of this Article whether any particular matter operates, or may be expected to operate, against the public interest, the<sup>F67</sup> Competition Commission] shall have regard to the matters as respects which duties are imposed on the Department and the Director by<sup>F68</sup> Article 14 of the Energy (Northern Ireland) Order 2003].

*Paras. (9) and (9A) rep. by 2002 c. 40*

(10) In this Article and Articles<sup>F70</sup> 15A,] 16<sup>F68</sup>,17 or 17A]

“relevant conditions” has the meaning given by paragraph (1) or (2);

“relevant licence holder”

- (a) in relation to a reference under paragraph (2), means the holder of a licence to which the reference relates;
- (b) in relation to modifications of relevant conditions within the meaning given by that paragraph, means the holder of a licence which incorporates the conditions.

**F67** SI 1999/506

**F68** 2003 NI 6

**F69** Words in art. 15(2)(a)(i) substituted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\)](#), **reg. 24**

**F70** 2002 c. 40

### References under Article 15: time limits

<sup>F71</sup>**15A.**—(1) Every reference under Article 15 shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.

(2) A report of the Competition Commission on a reference under Article 15 shall not have effect (and no action shall be taken in relation to it under Article 17) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Director under paragraph (3).

(3) The Director may, if he has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.

(4) No more than one extension is possible under paragraph (3) in relation to the same reference.

(5) The Director shall, in the case of an extension made by him under paragraph (3)—

- (a) publish that extension in such manner as he considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and

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- (b) send a copy of what has been published by him under sub-paragraph (a) to the holder of the licence or, as the case may be, the relevant licence holders.]

F71 2002 c. 40

### References under Article 15: powers of investigation

[<sup>F71</sup>15B.—(1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in paragraphs (2) and (3), for the purposes of references under Article 15 as they apply for the purposes of references under that Part—

- (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of paragraph (1), have effect as if—
- (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of paragraph (1), have effect as if—
- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.

(4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of paragraph (1), have effect in relation to those sections as applied by virtue of that paragraph.

(5) Accordingly, corresponding provisions of this Order shall not have effect in relation to those sections as applied by virtue of that paragraph.]

F71 2002 c. 40

### Reports on modification references

- 16.—(1) In making a report on a reference under Article 15, the [<sup>F72</sup> Competition Commission]
- (a) shall include in the report definite conclusions on the questions comprised in the reference together with such an account of their reasons for those conclusions as in their opinion is expedient for facilitating a proper understanding of those questions and of their conclusions;

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- (b) where they conclude that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, shall specify in the report the effects adverse to the public interest which those matters have or may be expected to have; and
- (c) where they conclude that any adverse effects so specified could be remedied or prevented by modifications of the relevant conditions, shall specify in the report modifications by which those effects could be remedied or prevented.

[<sup>F73</sup>(1A) For the purposes of [<sup>F74</sup> Articles 17 and 17A], a conclusion contained in a report of the Competition Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.

(1B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under Article 15 as the conclusions of the Competition Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.]

*Para. (2) rep. by 1998 c. 41*

[<sup>F75</sup>(3) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under Article 15.

(3A) In making any report on a reference under Article 15 the Competition Commission must have regard to the following considerations before disclosing any information.

(3B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.

(3C) The second consideration is the need to exclude from disclosure (so far as practicable)—

- (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
- (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual's interests.

(3D) The third consideration is the extent to which the disclosure of the information mentioned in paragraph (3C)(a) or (b) is necessary for the purposes of the report.]

(4) A report of the [<sup>F72</sup> Competition Commission] on a reference under Article 15 shall be made to the Director.

(5) Subject to paragraph (7), the Director shall—

- (a) on receiving a report on a reference under Article 15(1), send a copy of it to the licence holder and to the Department; and
- (b) not less than 14 days from the day on which the Department receives that copy, publish the report in such manner as he considers appropriate for bringing the report to the attention of persons likely to be affected by it.

(6) Subject to paragraph (7), the Director shall—

- (a) on receiving a report on a reference under Article 15(2), send a copy of it to the Department; and
- (b) not less than 14 days from the day on which the Department receives that copy—
  - (i) send another copy to each relevant licence holder; and
  - (ii) not less than 24 hours after complying with head (i), publish the report in such manner as he considers appropriate for bringing the report to the attention of persons likely to be affected by it.

(7) If it appears to the Department that the publication of any matter in such a report would be against the public interest or the commercial interests of any person, the Department may, before the



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end of the period of 14 days mentioned in paragraph (5)(b) or (6)(b), direct the Director to exclude that matter from every copy of the report to be published or (as the case may be) sent and published under that sub-paragraph.

**F72** SI 1999/506  
**F73** 2002 c. 40  
**F74** 2003 NI 6  
**F75** 2002 c. 40

### Modification following report

17.—(1) Where a report of the<sup>[F76]</sup> Competition Commission] on a reference under Article 15—

- (a) includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest;
- (b) specifies effects adverse to the public interest which those matters have or may be expected to have;
- (c) includes conclusions to the effect that those effects could be remedied or prevented by modifications of the relevant conditions; and
- (d) specifies modifications by which those effects could be remedied or prevented,

the Director shall, subject to the following provisions of this Article, make such modifications of the relevant conditions as appear to him requisite for the purpose of remedying or preventing the adverse effects specified in the report.

(2) Where at any time the Director modifies under paragraph (1) the standard conditions of licences under sub-paragraph (a), (b) <sup>[F77]</sup>, (c) or (d)] of Article 8(1), he—

- (a) shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences under that sub-paragraph granted after that time; and
- (b) may make such incidental or consequential modifications as he considers necessary or expedient of any conditions of licences under that sub-paragraph granted before that time,

and the above reference to paragraph (1) is a reference to that paragraph as it applies in relation to a report on a reference under Article 15(2).

(3) Before making modifications under this Article, the Director shall have regard to the modifications specified in the report.

(4) Before making modifications under this Article, the Director shall give notice—

- (a) stating that he proposes to make the modifications and setting out their effect;
- (b) stating the reasons why he proposes to make the modifications; and
- (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(5) A notice under paragraph (4) shall be given—

- (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the making of the modifications; and
- (b) by serving a copy of the notice on the licence holder or, as the case may be, the relevant licence holders.

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[<sup>F78</sup>(5A) After considering any representations or objections made in response to proposals set out in a notice under paragraph (4), the Authority shall give notice to the Competition Commission—

- (a) setting out the modifications it proposes to make to remedy or prevent the adverse effects specified in the report; and
- (b) stating the reasons for making the modifications.

(5B) The Authority shall include with the notice under paragraph (5A) a copy of any representations or objections received in relation to the notice under paragraph (4).

(5C) If the period of four weeks from the date on which the notice under paragraph (5A) is given elapses without a direction under Article 17A(1)(a) having been given to it, the Authority shall—

- (a) make the modifications set out in the notice; or
- (b) if a direction under Article 17A(1)(b) has been given, make the modifications which are not specified in the direction.]

(6) Where at any time the Director modifies standard conditions under paragraph (2)(a) for the purposes of their incorporation in licences under sub-paragraph (a), (b) [<sup>F79</sup>, (c) or (d)] of Article 8(1) granted after that time, he shall publish the modifications in such manner as he considers appropriate.

[<sup>F78</sup>(7) The modification under paragraph (1) of part of a standard condition of a particular licence shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.]

**F76** SI 1999/506

**F77** Words in art. 17(2) substituted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\)](#), **reg. 25**

**F78** 2003 NI 6

**F79** Words in art. 17(6) substituted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\)](#), **reg. 25**

### [<sup>F80</sup> **Competition Commission's power to veto modifications following report**

**17A.—(1)** The Competition Commission (in this Article referred to as “the Commission”) may, within the period of four weeks after the date on which it is given a notice under Article 17(5A), direct the Authority—

- (a) not to make the modifications set out in that notice; or
- (b) not to make such of the modifications as may be specified in the direction;

and the Authority shall comply with any such direction.

(2) The Department may, within the period of four weeks after the date on which the Commission is given a notice under Article 17(5A) and on the application of the Commission, direct that the period for giving a direction under paragraph (1) (and, accordingly, the period mentioned in Article 17(5C)) shall be extended by 14 days.

(3) The power to give a direction under paragraph (1) may only be exercised in respect of such of the modifications set out in the notice under Article 17(5A)(a) as appear to the Commission not to be the modifications which are requisite for the purpose of remedying or preventing all or any of the adverse effects specified in the report as effects which could be remedied or prevented by modifications.

(4) If the Commission gives a direction under paragraph (1), the Commission—

- (a) shall give notice setting out the modifications proposed by the Authority, the terms of the direction and the reasons for giving it; and

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- (b) shall itself make such modifications of the relevant conditions as appear to it to be requisite for the purpose of remedying or preventing—
- (i) if the direction was given under paragraph (1)(a), the adverse effects specified in the report as effects which could be remedied or prevented by modifications;
  - (ii) if the direction was given under paragraph (1)(b), such of those adverse effects as are not remedied or prevented by the modifications made by the Authority under Article 17(5C)(b).
- (5) In exercising its function under paragraph (4)(b) the Commission shall have regard to the matters to which the Authority is required to have regard when determining the conditions of a licence.
- (6) Before making modifications under paragraph (4)(b) the Commission shall give notice—
- (a) stating that it proposes to make the modifications and setting them out;
  - (b) stating the reason why it proposes to make them;
  - (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (7) A notice under paragraph (4)(a) or (6) shall be given—
- (a) by publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the making of the modifications; and
  - (b) by serving a copy on the Authority and the holder of the licence in question or, as the case may be, the relevant licence holders.
- (8) After making modifications under this Article the Commission shall publish a notice stating that the modifications have been made and setting them out, with the reasons for making them.
- (9) Where, in consequence of a reference under Article 15 (2) the Commission modifies under paragraph (4)(b) the standard conditions of licences of any type (that is to say, licences under Article 8(1)(a) or (b) <sup>F81</sup>, (c) or (d)) the Authority may make such incidental and consequential modifications as it considers necessary or expedient of any conditions of licences of that type granted before that time.
- (10) Where the Commission modifies the standard conditions of licences of any type as mentioned in paragraph (9) the Authority—
- (a) shall make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time; and
  - (b) shall publish the modifications made for those purposes in such manner as it considers appropriate.
- (11) The modification under this Article of part of a standard condition of a particular licence in consequence of a reference under Article 15(1) shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.
- (12) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under paragraph (4)(a), (6) or (8).
- (13) In giving any notice under paragraph (4)(a) or (6), or publishing any notice under paragraph (8), the Commission shall have regard to the following considerations before disclosing any information.
- (14) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest.

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- (15) The second consideration is the need to exclude from disclosure (so far as practicable)—
- (a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
  - (b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests.
- (16) The third consideration is the extent to which the disclosure of the information mentioned in paragraph (15)(a) or (b) is necessary for the purposes of the notice.
- (17) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in paragraphs (18) and (19), for the purposes of any investigation by the Commission for the purposes of the exercise of its functions under this Article, as they apply for the purposes of any investigation on references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (18) Section 110 shall, in its application by virtue of paragraph (17), have effect as if—
- (a) subsection (2) were omitted;
  - (b) in subsection (4), for the words “the publication of the report of the Commission on the reference concerned” there were substituted “ the publication by the Commission of a notice under Article 17A (8) of the Gas (Northern Ireland) Order 1996 in connection with the reference concerned or, if no direction has been given by the Commission under Article 17A(1) of that Order in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period ”;
  - (c) in subsection (9) the words from “or section” to “section 65 (3))” were omitted.
- (19) Section 111 (5)(b) shall, in its application by virtue of paragraph (17), have effect as if for sub-paragraph (ii) there were substituted—
- “(ii) if earlier, the day on which a notice is published by the Commission under Article 17A (8) of the Gas (Northern Ireland) Order 1996 in connection with the reference concerned or, if no direction is given by the Commission under Article 17A(1) of that Order in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period.” .
- (20) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of paragraph (17), have effect in relation to those sections as applied by virtue of that paragraph.
- (21) Accordingly, corresponding provisions of this Order shall not have effect in relation to those sections as applied by virtue of that paragraph.]

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**F81** Words in art. 17A(9) substituted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\)](#), **reg. 26**

### Modification by order under other statutory provisions

**18** <sup>F82</sup>.—<sup>F83</sup>(1) Where the Office of Fair Trading, the Competition Commission or (as the case may be) the Secretary of State (in this Article “the relevant authority”) makes a relevant order, the order may also provide for the modification of—

- (a) the conditions of a particular licence; or
- (b) the standard conditions of licences under sub-paragraph (a), (b) <sup>F84</sup>, (c) or (d)] of Article 8(1),

to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.

(1A) In paragraph (1) “relevant order” means—

- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—
  - (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the carrying on of activities authorised or regulated by a licence; or
  - (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the carrying on of activities authorised or regulated by a licence; or
- (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to activities authorised or regulated by a licence.]

<sup>F85</sup>(1A) The modification under paragraph (1)(i) of part of a standard condition of a particular licence shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.]

(2) Where at any time the<sup>F83</sup> relevant authority modifies under paragraph (1)(b)] the standard conditions of licences under sub-paragraph (a), (b) <sup>F86</sup>, (c) or (d)] of Article 8(1),<sup>F83</sup> the relevant authority]

- (a) shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences under that sub-paragraph granted after that time; and
- (b) may, after consultation with the Director, make such incidental or consequential modifications as<sup>F83</sup> the relevant authority] considers necessary or expedient of any conditions of licences under that sub-paragraph granted before that time.

*Para. (3) rep. by 2002 c. 40*

(4) Where at any time the<sup>F83</sup> relevant authority] modifies standard conditions under paragraph (2) (a) for the purposes of their incorporation in licences under sub-paragraph (a), (b) <sup>F87</sup>, (c) or (d)] of Article 8(1) granted after that time,<sup>F83</sup> the relevant authority] shall publish the modifications in such manner as<sup>F83</sup> the relevant authority] considers appropriate.

<sup>F83</sup>(5) Expressions used in paragraph (1A) above and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meanings in that paragraph as in that Part.]

**F82** mod. by SI 2003/1592

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- F83** 2002 c. 40
- F84** Words in art. 18(1)(b) substituted (12.4.2013) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2013 (S.R. 2013/92), **reg. 27**
- F85** 2003 NI 6
- F86** Words in art. 18(2) substituted (12.4.2013) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2013 (S.R. 2013/92), **reg. 27**
- F87** Words in art. 18(4) substituted (12.4.2013) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2013 (S.R. 2013/92), **reg. 27**

*Art. 18A rep. by 2003 NI 6*

*Arts. 19#21 rep. by 2003 NI 6*

VALID FROM 06/02/2015

*[<sup>F88</sup> Appeal from decisions of the Authority*

- F88** Arts. 14-14G substituted (6.2.2015) for art. 14 by Gas and Electricity Licence Modification and Appeals Regulations (Northern Ireland) 2015 (S.R. 2015/1), **reg. 3(1)** (with reg. 5)

**Appeal to the CMA**

**14B.**—(1) An appeal lies to the CMA against a decision by the Authority to proceed with the modification of a condition of a licence under Article 14.

- (2) An appeal may be brought under this Article only by—
- (a) a relevant licence holder (within the meaning of Article 14);
  - (b) any other person who holds a licence of any type under Article 8(1) whose interests are materially affected by the decision;
  - (c) a qualifying body or association in the capacity of representing a person falling within sub-paragraph (a) or (b);
  - (d) the General Consumer Council in the capacity of representing consumers whose interests are materially affected by the decision.
- (3) The permission of the CMA is required for the bringing of an appeal under this Article.
- (4) The CMA may refuse permission to bring an appeal only on one of the following grounds—
- (a) in relation to an appeal brought by a person falling within paragraph (2)(b), that the interests of the person are not materially affected by the decision;
  - (b) in relation to an appeal brought by a qualifying body or association, that the interests of the person represented are not materially affected by the decision;
  - (c) in relation to an appeal brought by the General Consumer Council, that the interests of the consumers represented are not materially affected by the decision;
  - (d) in relation to any appeal—
    - (i) that the appeal is brought for reasons that are trivial or vexatious;
    - (ii) that the appeal has no reasonable prospect of success.

(5) References in this Article to a qualifying body or association are to a body or association whose functions are or include representing persons in respect of interests of theirs which are materially affected by the decision in question.

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### **Procedure on appeal to CMA**

**14C.**—(1) Schedule 3A has effect.

(2) Except where specified otherwise in Schedule 3A, the functions of the CMA with respect to an appeal under Article 14B are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 <sup>F89</sup>.

**F89** 2013 c.24

### **Determination by CMA of appeal**

**14D.**—(1) This Article applies to every appeal brought under Article 14B.

(2) In determining an appeal the CMA must have regard, to the same extent as is required of the Authority, to the matters to which the Authority must have regard—

- (a) in the carrying out of its principal objective under Article 14 of the Energy Order; and
- (b) in the performance of its duties under that Article and Article 6B of the Energy Order.

(3) In determining the appeal the CMA—

- (a) may have regard to any matter to which the Authority was not able to have regard in relation to the decision which is the subject of the appeal; but
- (b) must not, in the exercise of that power, have regard to any matter to which the Authority would not have been entitled to have regard in reaching its decision had it had the opportunity of doing so.

(4) The CMA may allow the appeal only to the extent that it is satisfied that the decision appealed against was wrong on one or more of the following grounds—

- (a) that the Authority failed properly to have regard to any matter mentioned in paragraph (2);
- (b) that the Authority failed to give the appropriate weight to any matter mentioned in paragraph (2);
- (c) that the decision was based, wholly or partly, on an error of fact;
- (d) that the modifications fail to achieve, in whole or in part, the effect stated by the Authority by virtue of Article 14(8)(b);
- (e) that the decision was wrong in law.

(5) To the extent that the CMA does not allow the appeal, it must confirm the decision appealed against.

### **CMA's powers on allowing appeal**

**14E.**—(1) This Article applies where the CMA allows an appeal to any extent.

(2) If the appeal is in relation to a price control decision, the CMA must do one or more of the following—

- (a) quash the decision (to the extent that the appeal is allowed);
- (b) remit the matter back to the Authority for reconsideration and determination in accordance with any directions given by the CMA;
- (c) substitute the CMA's decision for that of the Authority (to the extent that the appeal is allowed) and give any directions to the Authority or any other party to the appeal.

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(3) If the appeal is in relation to any other decision, the CMA must do one or both of the following—

- (a) quash the decision (to the extent that the appeal is allowed);
- (b) remit the matter back to the Authority for reconsideration and determination in accordance with any directions given by the CMA.

(4) A direction under paragraph (2) or (3) must not require a person to do anything that the person would not have power to do (apart from the direction).

(5) A person to whom a direction is given under paragraph (2) or (3) must comply with it.

(6) A direction given under paragraph (2) or (3) to a person other than the Authority is enforceable as if it were an order of the High Court.

(7) For the purposes of this Article a decision is a price control decision, in relation to the modification of a condition of a licence, if the purpose of the condition is, in the CMA's opinion, to limit or control the charges on, or the revenue of, the holder of the licence.

(8) In determining for the purposes of paragraph (7) what the purpose of a condition is the condition may be assessed on its own or in combination with any other conditions of the licence.

(9) In this Article and Articles 14F and 14G any reference to a party to an appeal is to be read in accordance with Schedule 3A.

#### **Time limits for CMA to determine an appeal**

**14F.**—(1) The CMA must—

- (a) determine an appeal against a price control decision within the period of 6 months beginning with the permission date;
- (b) determine an appeal against any other decision within the period of 4 months beginning with the permission date.

(2) Paragraph (1)(a) or (b) does not apply if paragraph (3) applies.

(3) This paragraph applies where—

- (a) the CMA has received representations on the timing of the determination from a party to the appeal; and
- (b) it is satisfied that there are special reasons why the determination cannot be made within the period specified in paragraph (1)(a) or (b).

(4) Where paragraph (3) applies, the CMA must—

- (a) determine an appeal against a price control decision within the period specified by it, not being longer than the period of 7 months beginning with the permission date;
- (b) determine an appeal against any other decision within the period specified by it, not being longer than the period of 5 months beginning with the permission date.

(5) Where paragraph (3) applies, the CMA must also—

- (a) inform the parties to the appeal of the time limit for determining the appeal, and
- (b) publish that time limit in such manner as it considers appropriate for the purpose of bringing it to the attention of any other persons likely to be affected by the determination.

(6) In this Article “price control decision” is to be read in accordance with Article 14E.

(7) References in this Article to the permission date are to the date on which the CMA gave permission to bring the appeal in accordance with Article 14B(3).



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### **Determination of appeal by CMA: supplementary**

**14G.**—(1) A determination by the CMA on an appeal—

- (a) must be contained in an order made by the CMA;
- (b) must set out the reasons for the determination;
- (c) takes effect at the time specified in the order or determined in accordance with provision made in the order;
- (d) must be notified by the CMA to the parties to the appeal;
- (e) must be published by the CMA—
  - (i) as soon as reasonably practicable after the determination is made;
  - (ii) in such manner as the CMA considers appropriate for the purpose of bringing the determination to the attention of any person likely to be affected by it (other than a party to the appeal).

(2) The CMA may exclude from publication under paragraph (1)(e) any information which it is satisfied is—

- (a) commercial information, the disclosure of which would, or might in the CMA's opinion, significantly harm the legitimate business interests of an undertaking to which it relates; or
- (b) information relating to the private affairs of an individual, the disclosure of which would, or might in the CMA's opinion, significantly harm the individual's interests.

(3) The Authority must take such steps as it considers requisite for it to comply with an order of the CMA made by virtue of paragraph (1)(a).

(4) The steps must be taken—

- (a) if a time is specified in (or is to be determined in accordance with) the order, within that time;
- (b) in any other case, within a reasonable time.

(5) Paragraphs (2) to (4) of Article 14A apply where a condition of a licence is modified in accordance with Article 14E as they apply where a condition of a licence is modified under Article 14.]

### *Meters*

VALID FROM 25/07/2014

#### **[<sup>F90</sup>Individual meters**

**21A.**—(1) Where a customer of a gas supplier is to be charged for his supply wholly or partly by reference to the quantity of gas supplied, the supply shall be given through, and the quantity of gas shall be ascertained by, a meter which complies with Article 22.

(2) Any charge in respect of the provision of such a meter (whether that provision is by way of sale, hire or loan) shall be no higher than the competitive market rate.]

**F90** Art. 21A inserted (25.7.2014) by [Energy Efficiency Regulations \(Northern Ireland\) 2014 \(S.R. 2014/198\)](#), **reg. 11**

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## Meter testing and stamping

22.—(1) No meter shall be used for the purpose of ascertaining the quantity of gas supplied to any person unless it is stamped either by, or on the authority of, a meter examiner appointed under this Article or in such other manner as may be authorised by regulations.

(2) Subject to paragraphs (3) to (5), it shall be the duty of a meter examiner <sup>F91</sup> . . . , on being required to do so by any person and on payment of the prescribed fee, to examine any meter used or intended to be used for ascertaining the quantity of gas supplied to any person, and to stamp, or authorise the stamping of, that meter.

(3) A meter examiner shall not stamp, or authorise the stamping of, any meter unless he is satisfied that it is of such pattern and construction and is marked in such manner as is approved by the Director and that the meter conforms with such standards as may be prescribed.

(4) A meter examiner may stamp or authorise another person to stamp a meter, notwithstanding that he has not himself examined it, if—

- (a) the meter was manufactured or repaired by the person submitting it to the examiner;
- (b) that person has obtained the consent of the Director to his submission; and
- (c) any conditions subject to which the consent was given have been satisfied.

(5) A meter examiner may authorise another person to stamp a meter, notwithstanding that he himself has not examined it, if—

- (a) the meter was manufactured or repaired by that person;
- (b) that person has obtained the consent of the Director to his stamping of the meter; and
- (c) any conditions subject to which the consent was given have been satisfied.

(6) Regulations may make provision—

- (a) for re-examining meters already stamped, and for the cancellation of stamps in the case of meters which no longer conform with the prescribed standards and in such other circumstances as may be prescribed;
- (b) for requiring meters to be periodically overhauled;
- (c) for the revocation of any approval given by the Director to any particular pattern or construction of meter, and for requiring existing meters of that pattern or construction to be replaced within such period as may be prescribed; and
- (d) for the expenses of any such re-examination, overhaul or replacement of a meter to be defrayed in such manner as may be prescribed.

(7) All fees payable to meter examiners <sup>F92</sup> . . . for the performance of functions conferred by or under this Article shall be paid to the Director; and any sums received by him under this paragraph shall be paid into the Consolidated Fund.

(8) The fees to be paid to meter examiners <sup>F93</sup> . . . for the performance of functions conferred by or under this Article, and the persons by whom they are to be paid, shall be such as may be prescribed.

(9) The Director shall appoint competent and impartial persons as meter examiners for the purposes of this Article.

(10) If any person—

- (a) supplies gas through a meter which has not been stamped under this Article; or
- (b) uses, for ascertaining the quantity of gas supplied to any person or premises, a meter which has not been stamped under this Article,

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

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(11) Where the commission by any person of an offence under paragraph (10) is due to the act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(12) In any proceedings for an offence under paragraph (10) it shall be a defence for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(13) Regulations may exempt meters of a prescribed class or description from provisions of this Article.

(14) In this Article “regulations” means regulations made by the Director.

- F91** Words in art. 22(2) omitted (21.3.2011) by virtue of [Energy Act \(Northern Ireland\) 2011 \(c. 6\), ss. 16\(2\), 36\(1\); S.R. 2011/95, art. 2](#)
- F92** Words in art. 22(7) omitted (21.3.2011) by virtue of [Energy Act \(Northern Ireland\) 2011 \(c. 6\), ss. 16\(2\), 36\(1\); S.R. 2011/95, art. 2](#)
- F93** Words in art. 22(8) omitted (21.3.2011) by virtue of [Energy Act \(Northern Ireland\) 2011 \(c. 6\), ss. 16\(2\), 36\(1\); S.R. 2011/95, art. 2](#)

**Modifications etc. (not altering text)**

- C1** [Art. 22](#) modified (30.10.2006) by [Measuring Instruments \(Gas Meters\) Regulations 2006 \(S.I. 2006/2647\), reg. 29](#) (with [reg. 27\(1\)\(2\)](#))
- C2** [Art. 22](#) excluded (17.1.2013) by [Gas \(Meter Testing and Stamping\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/454\), reg. 2](#)

*Consumer protection: miscellaneous*

**Functions with respect to competition**

*Para. (1) rep. by 2002 c. 40*

[<sup>F94</sup>(2) The functions to which paragraph (2A) applies shall be concurrent functions of the Director and the Office of Fair Trading.

(2A) This paragraph applies to the functions of the Office of Fair Trading under Part 4 of the Enterprise Act 2002 (other than sections 166 and 171) so far as relating to commercial activities connected with the conveyance, storage or supply of gas.

(2B) So far as necessary for the purposes of, or in connection with, paragraphs (2) and (2A), references in Part 4 of the Act of 2002 to the Office of Fair Trading (including references in provisions of that Act applied by that Part) shall be construed as including references to the Director (except in sections 166 and 171 of that Act and in any other provision of that Act where the context otherwise requires).]

[<sup>F95</sup>[

<sup>F96</sup>(3) The Director shall be entitled to exercise, concurrently with the Office of Fair Trading, the functions of the Office of Fair Trading under the provisions of Part 1 of the Competition Act 1998 (other than sections 31D(1) to (6), 38(1) to (6) and 51), so far as relating to—

- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,
- (b) conduct of the kind mentioned in section 18(1) of that Act,
- (c) agreements, decisions or concerted practices of the kind mentioned in Article 81(1) of the treaty establishing the European Community, or

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(d) conduct which amounts to abuse of the kind mentioned in Article 82 of the treaty establishing the European Community,  
connected with the conveyance, storage or supply of gas.]

(3A) So far as necessary for the purposes of , or in connection with, the provisions of paragraph (3), references in Part I of the Competition Act 1998 to<sup>[F94]</sup> the Office of Fair Trading] are to be read as including a reference to the Director (<sup>[F96]</sup> except in sections 31D(1) to (6), 38(1) to (6)], 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires.)]

<sup>[F94]</sup>(4) Before the Office of Fair Trading or the Director first exercises in relation to any matter functions which are exercisable concurrently by virtue of paragraph (2), it or he shall consult the other.

(4A) Neither the Office of Fair Trading nor the Director shall exercise in relation to any matter functions which are exercisable concurrently by virtue of paragraph (2) if functions which are so exercisable have been exercised in relation to that matter by the other.]

(5) It shall be the duty of the Director, for the purpose of assisting the<sup>[F97]</sup> Competition Commission] in carrying out an investigation on a reference made to them by the Director by virtue of paragraph (2)<sup>[F98]</sup>. . . , to give to the Commission—

- (a) any information which is in his possession and which relates to matters falling within the scope of the investigation and—
  - (i) is requested by the Commission for that purpose; or
  - (ii) is information which in his opinion it would be appropriate for that purpose to give to the Commission without any such request; and
- (b) any other assistance which the Commission may require and which it is within his power to give, in relation to any such matters,

and the Commission shall, for the purposes of carrying out any such investigation, take into account any information given to them for that purpose under this paragraph.

(6) If any question arises as to whether paragraph (2) or (3) applies to any particular case, that question shall be referred to and determined by the Department; and no objection shall be taken to anything done under—

- (a) <sup>[F94]</sup>Part 4 of the Enterprise Act 2002] (reports of<sup>[F97]</sup> Competition Commission)]; or

<sup>[F95]</sup>(b) Part I of the Competition Act 1998 (<sup>[F96]</sup> other than sections 31D(1) to (6), 38(1) to (6) and 51),]

by or in relation to the Director on the ground that it should have been done by or in relation to<sup>[F94]</sup> the Office of Fair Trading].

<sup>[F94]</sup>(7) Section 117 of the Enterprise Act 2002 (offences of supplying false or misleading information) as applied by section 180 of that Act shall have effect so far as relating to functions exercisable by the Director by virtue of paragraph (2) as if the references in section 117(1)(a) and (2) to the Office of Fair Trading included references to the Director.]

*Para. (8) rep. by 2002 c. 40*

(9) References in this Part to functions of the Director under this Part include references to functions<sup>[F95]</sup><sup>[F94]</sup> exercisable by the Director by virtue of paragraph (2) or (3)].]

**F94** 2002 c. 40

**F95** 1998 c. 41

**F96** SI 2004/1261

**F97** SI 1999/506

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**F98** 1998 c. 41

### **Fixing of maximum charges for reselling gas**

**24.**—(1) This Article applies to gas supplied to a consumer's premises by an authorised gas supplier, that is to say, a person who is authorised by a licence or exemption to supply gas to those premises.

(2) The Director shall from time to time direct that the maximum prices at which gas to which this Article applies may be resold—

- (a) shall be such as may be specified in the direction; or
- (b) shall be calculated by such method and by reference to such matters as may be so specified,

and shall publish directions under this Article in such manner as in his opinion will secure adequate publicity for them.

(3) A direction under this Article may—

- (a) require any person who resells gas to which this Article applies to furnish the purchaser with such information as may be specified or described in the direction; and
- (b) provide that, in the event of his failing to do so, the maximum price applicable to the resale shall be such as may be specified in the direction or shall be reduced by such amount or such percentage as may be so specified.

(4) Different directions may be given under this Article in different classes of cases, which may be defined by reference to areas, tariffs applicable to gas supplied by the authorised gas suppliers or any other relevant circumstances.

(5) If any person resells gas to which this Article applies at a price exceeding the maximum price determined by or under a direction under this Article and applicable to the resale—

- (a) the amount of the excess; and
- (b) if the direction so provides, interest on that amount at a rate specified or described in the direction,

shall be recoverable by the purchaser.

(6) Nothing in this Article shall apply in relation to the resale of gas for use in a motor vehicle which is constructed or adapted to use gas as fuel for its propulsion.

### **[<sup>F99</sup>Suppliers of Last Resort**

**24A.**—(1) Where it appears to the Authority that—

- (a) circumstances have arisen which would entitle it to revoke the licence of a gas supplier (“the defaulting supplier”); and
- (b) another gas supplier could comply with a direction under paragraph (2) without significantly prejudicing his ability—
  - (i) to continue to supply his customers; and
  - (ii) to fulfil his contractual obligations for the supply of gas,

the Authority may give such a direction to that supplier (“the designated supplier”).

(2) A direction under this paragraph—

- (a) shall require the designated supplier to supply gas to such customers of the defaulting supplier in such premises as are specified or described in the direction; and

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(b) may include such other requirements or prohibitions as are, in the opinion of the Authority, reasonably incidental or to consequential upon the requirement to supply.

(3) A direction under paragraph (2) shall specify the terms and conditions under which the designated supplier shall supply gas to any other customer to which the direction relates, including in particular the terms and conditions in relation to—

(a) the termination of supply; and

(b) the method for calculating the charges for supply;

and may specify the terms and conditions under which the designated supplier shall do anything else in pursuance of the direction.

(4) A direction under paragraph (2) may also modify the supply licence of the designated supplier or the conditions included in that licence where it is necessary or expedient for the purposes of ensuring that the supplier can comply with any requirement or prohibition under that direction.

(5) Upon being given a direction under paragraph (2) the designated supplier shall send a notice to those customers of the defaulting supplier to which the direction relates giving such particulars and containing such information as the Authority may specify in the direction.

(6) Where the customer is supplied by gas by a designated supplier in pursuance of a direction under paragraph (2), a contract for the supply of gas shall be deemed to exist between the customer and the designated supplier from the date on which the supply of gas commenced to the date the direction ceases to have effect.

(7) A direction under paragraph (2) may be made subject to such conditions as the Authority may specify in the directions.

(8) A direction under paragraph (2) shall take effect from such date as may be specified in the direction and shall continue for such period (being no longer than six months) as may be specified in the direction and shall then cease to have effect.

(9) In this Article—

“gas supplier” means a person who is authorised by a licence to supply gas to specified persons or premises;

“customer” in relation to a gas supplier means the persons or the occupier of the premises so specified;

“licence” means a licence granted under Article 8(1)(c); and

“specified” has the same meaning as in Article 8(1).]

**F99** Art. 24A inserted (29.1.2010) by [Gas \(Supplier of Last Resort\) Regulations \(Northern Ireland\) 2009](#) (S.R. 2009/412), **reg. 2(2)**

#### [<sup>F100</sup>**Billing disputes: gas**

**24A.**—(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 a gas 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 gas supply services.

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(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 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 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 reaching 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 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.]

**F100** Art. 24A inserted (15.4.2011) by virtue of [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 8** (then by [Gas Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\)](#), **reg. 32(1)(2)**), it is provided that **reg. 8**, of the [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#) (which inserted this version of art. 24A on 15.4.2011) is revoked and replaced on 12.4.2013. Therefore this

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version of art. 24A is in operation from 15.4.2011 until the date it is replicated (apart from a change to the articles heading) by the newly inserted art. 24B on 12.4.2013.)

## [<sup>F101</sup>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 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.

(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.



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(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.]

**F101** Art. 24B inserted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\)](#), [reg. 32\(2\)](#)

*Arts. 25, 26 rep. by 2003 NI 6*

#### *Other functions of Director*

#### **General functions**

27.—(1) It shall be the duty of the Director, so far as it appears to him practicable to do so—

- (a) to keep under review the carrying on both in Northern Ireland and elsewhere of activities connected with the conveyance, storage and supply of gas; and
- (b) to collect information with respect to those activities, and the persons by whom they are carried on, with a view to facilitating the exercise of his<sup>F102</sup> gas functions].

(2) The Department may [<sup>F103</sup>issue guidance] indicating—

- (a) considerations to which the Director should have particular regard in determining the order of priority in which matters are to be brought under review in performing his duty under paragraph (1)(a) or (b); and
- (b) considerations to which, in cases where it appears to the Director that any of his<sup>F102</sup> gas functions] are exercisable, he should have particular regard in determining whether to exercise those functions.

(3) It shall be the duty of the Director, where either he considers it expedient or he is requested by the Department or<sup>F104</sup> the Office of Fair Trading] to do so, to give information, advice and assistance to the Department or<sup>F104</sup> the Office of Fair Trading] with respect to any matter in respect of which any<sup>F102</sup> of the gas functions of the Authority or the Department] is exercisable.

<sup>F102</sup>(3A) In this Article "gas functions" means—

- (a) functions under this Part, and
- (b) functions under the Energy (Northern Ireland) Order 2003 relating to gas.]

<sup>F105</sup>(3B) The activities to which paragraph (1) applies include, in particular, the matters specified in the following provisions of the Directive as matters to be monitored—

- (a) Article 26(3);
- (b) Article 41(1)(g) to (k), (m), (n) and (r) to (t);
- (c) where an independent system operator has been designated under Article 8H of this Order, Article 41(3)(a) and (b); and

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(d) where a person has been certified on the basis of the third certification ground (independent transmission operator) in Article 8F and designated as a gas transmission operator under Article 8H of this Order, Article 41(5)(b) and (d); and

(e) Article 41(9).]

*Para. (4) rep. by 2003 NI 6*

**F102** 2003 NI 6

**F103** Words in art. 27(2) substituted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 67**

**F104** 2002 c. 40

**F105** Art. 27(3B) inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 69**

### [<sup>F106</sup>Dispute resolution

[<sup>F107</sup>27A.—(1) Any person may make a complaint under this Article (hereinafter referred to as “a complaint”) if—

[<sup>F108</sup>(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);]

(b) it is wholly or mainly a complaint against that holder regarding an obligation imposed on him pursuant to the Directive; and

(c) the subject matter of the complaint is not capable of being determined pursuant to any other Article of this Order or any condition of the licence held by the holder.]

(2) A complaint shall be made in writing to the Authority and shall be accompanied by such information as is necessary or expedient to allow the Authority to make a determination in relation to the complaint.

(3) The Authority shall establish and publish such procedures as it thinks appropriate for the determination by it of a complaint.

(4) The procedures established under paragraph (3) shall provide for the determination of the complaint to be notified to the complainant within the requisite period or such longer period as the Authority may agree with the complainant.

(5) For the purposes of paragraph (4) the requisite period in any case means—

- (a) the period of two months from the date when the complaint was received by the Authority; or
- (b) where the information sent to the Authority under paragraph (2) was in its opinion insufficient to enable it to make a determination, the period of four months from the date the complaint was received by the Authority.

(6) For the purposes of this Article “determination” in relation to any complaint about a licence holder means a determination pursuant to any power or duty which is conferred or imposed on the Authority in relation to gas under this Order or the Energy (Northern Ireland) Order 2003 and which is relevant to the subject matter of the complaint.

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[  
F109(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.]]

**F106** Art. 27A inserted (1.10.2006) by Gas Order 1996 (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/358), **reg. 9**

**F107** Art. 27A(1) substituted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 70**

**F108** Art. 27A(1)(a) substituted (12.4.2013) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2013 (S.R. 2013/92), **reg. 28(1)**

**F109** Art. 27A(7)(8)(9) inserted (12.4.2013) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2013 (S.R. 2013/92), **reg. 28(2)**

*Art. 28 rep. by 2003 NI 6*

### Keeping of register

**29.**—(1) The Director shall, at such premises and in such form as he may determine, maintain a register for the purposes of this Part.

(2) Subject to paragraph (3) and to any direction given under paragraph (4), the Director shall cause to be entered in the register the provisions of—

- (a) every licence and every exemption granted to a particular person;
- (b) every modification or revocation of a licence and every revocation of an exemption;
- (c) every direction or consent given or determination made under a licence;<sup>F110</sup> . . .

[<sup>F110</sup>(d) every final or provisional order under Article 42 of the Energy (Northern Ireland) Order 2003 relating to a licence holder, every confirmation of a provisional order so relating, every revocation of a final or provisional order so relating and every notice under paragraph (7) of that Article so relating; and

- (e) every penalty imposed under Article 45 of the Energy (Northern Ireland) Order 2003 on a licence holder and every notice under Article 45(6) of that Order relating to such a penalty.]

(3) In entering any provision in the register, the Director shall have regard to the need for excluding, so far as that is practicable,<sup>[F110</sup> any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that individual or body].

(4) If it appears to the Department that the entry of any provision in the register would be against the public interest or the commercial interests of any person, the Department may direct the Director not to enter that provision in the register.

(5) The contents of the register shall be available for inspection by the public during such hours and subject to the payment of such fee as the Director may determine.

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(6) Any person may, on the payment of such fee as the Director may determine, require the Director to supply him with a copy of, or extract from, any part of the register, being a copy or extract which is certified by the Director to be a true copy or extract.

(7) Any sums received by the Director under this Article shall be paid into the Consolidated Fund.

**F110** 2003 NI 6

### Power to require information, etc.

*Para. (1) rep by 2003 NI 6*

(2) Where a licence has been or is to be revoked, or has expired or is about to expire by effluxion of time, and it appears to the Director, having regard to the duties imposed by<sup>F111</sup> Article 14 of the Energy (Northern Ireland) Order 2003], to be requisite or expedient to do so for any purpose connected with the revocation or expiry, the Director may<sup>F112</sup> . . . by notice signed by him—

- (a) require the licence holder to produce, at a time and place specified in the notice, to the Director, or to any person so specified, any records which are specified or described in the notice and are in the licence holder's custody or under his control; or
- (b) require the licence holder to furnish to the Director, or to any person specified in the notice, such information as may be specified or described in the notice, and specify the time, the manner and the form in which such information is to be furnished.

(3) No person shall be required under this Article to produce any documents or records which he could not be compelled to produce in civil proceedings in the High Court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in any such proceedings.

(4) A person who without reasonable excuse fails to do anything required of him by notice under paragraph<sup>F111</sup> . . . (2) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) A person who intentionally alters, suppresses or destroys any document or records which he has been required by any notice under paragraph<sup>F111</sup> . . . (2) to produce shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(6) If a person makes default in complying with a notice under paragraph<sup>F111</sup> . . . (2), the High Court may, on the application of the Director, make such order as the Court thinks fit for requiring the default to be made good; and any such order may provide that all the costs of and incidental to the application shall be borne by the person in default or by any officers of a company or other body or association who are responsible for its default.

**F111** 2003 NI 6

**F112** Words in art. 30(2) omitted (15.4.2011) by virtue of [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 68**

*Art. 31 rep. by 2003 NI 6*

### Annual and other reports

**32.**—<sup>F113</sup>(1) The Director shall, as soon as practicable after the end of each calendar year—

- (a) make to the Department a report on—

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- (i) his activities during that year; and
  - (ii) the Monopolies Commission's activities during that year so far as relating to references made by him; and
- (b) send a copy of that report to the chairman of the General Consumer Council.
- <sup>F113</sup>(2) Every such report shall—
- (a) include a general survey of developments, during the year to which it relates, in respect of matters falling within the scope of the Director's functions;
  - (b) set out any final or provisional orders made, and provisional orders confirmed, by the Director during that year;
  - (c) set out any general directions given to the Director during that year under Article 27(2); and
  - (d) include a summary of any reports made to him during that year by the General Consumer Council under Article 34.

<sup>F113</sup>(3) The Department shall lay a copy of every report made by the Director under paragraph (1) before the Assembly and shall arrange for copies of every such report to be published in such manner as the Department considers appropriate.

*Para. (4) rep. by 2003 NI 6*

<sup>F113</sup>(5) In making or preparing any report under this Article the Director shall have regard to the need for excluding, so far as that is practicable, the matters specified in Article 28(2)(a) and (b).

<sup>F113</sup>(6) Section 125(1) of the 1973 Act (annual and other reports) shall not apply to activities of the Monopolies Commission on which the Director is required to report by this Article.

**F113** prosp. rep. by [2003 NI 6](#)

#### *Provisions with respect to the General Consumer Council*

*Art. 33 rep. by 2003 NI 6*

### **Reports of the General Consumer Council**

*Para. (1) rep. by 2003 NI 6*

(2) The General Consumer Council shall send to the Director a copy of every report prepared by it under paragraph 12(1) of Schedule 1 to the General Consumer Council (Northern Ireland) Order 1984 (annual report of Council).

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

### **Consent of Director for construction of major pipe-line**

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

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

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

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- (a) will exceed 7 kilometres in length; and
  - (b) will have a design operating pressure exceeding 7 bar gauge.
- (3) The Director may by regulations amend the definition of major pipe-line in paragraph (2).
- (4) An application for the consent of the Director under this Article shall—
- (a) specify the points between which the proposed pipe-line is to run and be accompanied by a map on which is delineated the route which it is proposed to take;
  - (b) specify the length, diameter and capacity of the proposed pipe-line;
  - (c) be in such form, contain such other information and be accompanied by such fee as may be prescribed by regulations made by the Director.
- (5) An applicant for a consent under this Article shall provide the Director with such other information relevant to the application as the Director may require.
- (6) As soon as practicable after making an application for a consent under this Article, the applicant shall publish notice of that fact in such manner as the Director may require and such notice shall—
- (a) name a place where a copy of the application (and the map accompanying it) may be inspected free of charge, and copies thereof may be obtained on payment of a reasonable charge, at all reasonable hours; and
  - (b) specify a time within which representations concerning the application may be made to the Director.
- (7) After considering any such representations duly made to him, the Director may grant consent under this Article to the applicant or may refuse such consent.
- (8) A consent granted under this Article—
- (a) shall remain in force for such period as may be specified in or determined under the consent; and
  - (b) may be granted subject to such conditions (to be specified therein) as the Director thinks fit.
- (9) Without prejudice to the generality of paragraph (8)(b), a consent under this Article may be granted subject to conditions—
- (a) as to the route which the pipe-line is to take (subject to such limits of lateral deviation as may be specified);
  - (b) as to the ownership and operation of the pipe-line;
  - (c) requiring works for the construction of the pipe-line to be substantially commenced within a specified period;
  - (d) requiring the pipe-line, or any specified length of it, to be so constructed as to be capable of conveying specified quantities of gas.
- (10) Paragraph (11) applies where—
- (a) representations concerning an application are duly made to the Director under paragraph (6); and
  - (b) a consent granted in pursuance of that application indicates that specified conditions are, or are to a specified extent, attributable solely to such representations;
- and references in paragraphs (11) and (12) to “additional conditions” are references to conditions specified under sub-paragraph (b) or (as the case may be) to such conditions to the extent so specified.
- (11) Where this paragraph applies, the consent—
- (a) shall specify the sums or the method of determining the sums which the Director considers should be paid to the applicant by such of the persons who made representations to the

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Director as are specified, for the purpose of defraying so much of the cost of constructing the pipe-line as is attributable to the additional conditions;

- (b) shall specify the arrangements which the Director considers should be made by each of those persons, within a specified period, for the purpose of securing that those sums will be paid to the applicant if he constructs the pipe-line in accordance with the additional conditions.

(12) Where it appears to the Director that arrangements specified under paragraph (1 1)(b) have not been made by any person within the period so specified, the Director may amend the consent so as to eliminate the additional conditions so far as attributable to the representations made by that person.

(13) In paragraphs (9) to (12) “specified” means specified in the consent.

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

### **Increase of capacity, etc. of pipe-line**

**36.**—<sup>F114</sup>(1) If in the case of a pipe-line operated by a person holding a licence under Article 8(1) (a) (“the operator”) it appears to the Director, on the application of a person other than the operator, that the pipe-line can and should be modified—

- (a) by installing in it a junction through which another pipe-line may be connected to it; or
- (b) by modifying apparatus and works associated with a high pressure pipe-line so as to increase the capacity of the pipe-line,

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

(2) Directions under paragraph (1) may—

- (a) specify the modifications which the Director considers should be made in consequence of the application;
- (b) specify the sums or the methods of determining the sums which the Director considers should be paid to the<sup>F114</sup> operator by the applicant for the purpose of defraying the cost of the modifications;
- (c) specify the arrangements which the Director considers should be made by the applicant, within a period specified in the directions, for the purpose of securing that those sums will be paid to the<sup>F114</sup> operator if he carries out the modifications;
- (d) require the<sup>F114</sup> operator, if the applicant makes those arrangements within the period specified under sub-paragraph (c), to carry out the modifications within a period specified in the directions.

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

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

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

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

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

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

F114 prosp. subst. by 2003 NI 6

### **Consent of Director for construction of gas storage facility**

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

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

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

- (3) An application for the consent of the Director under this Article shall—
- (a) specify the location and capacity of the proposed gas storage facility;
  - (b) be in such form, contain such other information and be accompanied by such fee as may be prescribed by regulations made by the Director.

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

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

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

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

- (7) A consent granted under this Article—
- (a) shall remain in force for such period as may be specified in or determined under the consent; and
  - (b) may be granted subject to such conditions (to be specified therein) as the Director thinks fit.

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

- (a) as to the ownership and operation of the gas storage facility;



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- (b) requiring works for the construction of the facility to be substantially commenced within a specified period;
  - (c) requiring the facility to be so constructed as to be capable of storing specified quantities of gas.
- (9) Paragraph (10) applies where—
- (a) representations concerning an application are duly made to the Director under paragraph (5); and
  - (b) a consent granted in pursuance of that application indicates that specified conditions are, or are to a specified extent, attributable solely to such representations;
- and references in paragraphs (10) and (11) to “additional conditions” are references to conditions specified under sub-paragraph (b) or (as the case may be) to such conditions to the extent so specified.
- (10) Where this paragraph applies, the consent—
- (a) shall specify the sums or the method of determining the sums which the Director considers should be paid to the applicant by such of the persons who made representations to the Director as are specified, for the purpose of defraying so much of the cost of constructing the gas storage facility as is attributable to the additional conditions;
  - (b) shall specify the arrangements which the Director considers should be made by each of those persons, within a specified period, for the purpose of securing that those sums will be paid to the applicant if he constructs the gas storage facility in accordance with the additional conditions.
- (11) Where it appears to the Director that arrangements specified under paragraph (10)(b) have not been made by any person within the period so specified, the Director may amend the consent so as to eliminate the additional conditions so far as attributable to the representations made by that person.
- (12) In paragraphs (8) to (11) “specified” means specified in the consent.
- (13) Sums received by the Director under this Article shall be paid into the Consolidated Fund.

### **[<sup>F115</sup>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—

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- (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.]

**F115** Art. 37A inserted (12.4.2013) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2013 (S.R. 2013/92), reg. 29(1)

*Status: Point in time view as at 12/04/2013. This version of this Order contains provisions that are not valid for this point in time.*

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### **Increase of capacity of gas storage facility**

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

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

### **[<sup>F116</sup> Requirements for major pipelines etc**

**38A.**—(1) A consent under

- (a) Article 35 in relation to the construction of a major pipeline; or
- (b) Article 37 in relation to the construction of a gas storage facility,

shall not be granted unless the pipeline or facility, as the case may be, 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.

(2) Any direction under Article 36 in relation to the modification of a pipeline 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 Article 37 in relation to an increase in the capacity of a gas storage facility shall not be granted unless the facility 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.

(4) Where the Authority refuses to grant an application for a consent under Article 35 or 37 or a direction under Article 36 or 38 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.

(5) In this Article “published criteria” means the criteria determined by the Department from time to time for the purposes of and in accordance with Article 4(2) of the Directive and published by it.

(6) This Article does not apply in relation to any pipeline or facility to which Article 2 of the Commission Decision applies.]

**F116** Art. 38A substituted (1.10.2006) by [Gas Order 1996 \(Amendment\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/358\)](#), **reg. 10**

### **[<sup>F117</sup> 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.]

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**F117** 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—

- (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

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(c) require the owner, if the applicant pays or agrees to pay those sums within a period specified in that behalf in the directions, to enter into an agreement with him on the terms so specified.

(5) Paragraphs (4) to (7) of Article 36 apply in relation to directions under this Article as they apply in relation to directions under paragraph (1) of that Article, but with the substitution in paragraph (7) of a reference to the Department for the reference to the Director.

(6) In this Article—

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

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

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

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

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

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

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

and [F118]sections 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 [F119]Part 10 of that Act].

**F118** 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)

**F119** 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)

[F120]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

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- (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.

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(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.

**F120** Arts. 39A 39B inserted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\)](#), **reg. 30(1)**

**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).

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(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.]

**F120** Arts. 39A 39B inserted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\)](#), **reg. 30(1)**

*Miscellaneous*

**Directions for preserving security of gas supplies, etc.**

**40.**—(1) The Department may, after consultation with an authorised person, give to that person such directions of a general character as appear to the Department to be requisite or expedient for the purpose of—

- (a) preserving the security of buildings used for, or for purposes connected with, the conveyance, storage or supply of gas, or of gas plant; or
- (b) mitigating the effects of any civil emergency which may occur.

(2) If it appears to the Department to be requisite or expedient to do so for any such purpose as is mentioned in paragraph (1), the Department may, after consultation with an authorised person, give to that person a direction requiring him (according to the circumstances of the case) to do, or not to do, a particular thing specified in the direction.

(3) An authorised person shall give effect to any direction given to him by the Department under this Article notwithstanding any other duty imposed on him by or under this Order.

(4) A copy of every direction given under this Article shall be laid before the Assembly unless the Department is of the opinion that disclosure of the direction is against the interests of national security or the commercial interests of any person.

(5) A person shall not disclose, or be required under any statutory provision or otherwise to disclose, anything done by virtue of this Article if the Department has notified him that the Department is of the opinion that disclosure of that thing is against the interests of national security or the commercial interests of some other person.

(6) In this Article—

“authorised person” means the holder of a licence or exemption;

“civil emergency” means any natural disaster or other emergency which, in the opinion of the Department, is or may be likely to disrupt gas supplies.

**Exclusion of certain agreements from Restrictive Trade Practices Act 1976**

**41.** <sup>F121</sup> .....

**F121** Art. 41 revoked (1.3.2005) by [Competition Act 1998 \(Transitional, Consequential and Supplemental Provisions\) Order 2000 \(S.I. 2000/311\)](#), **art. 42(2)**



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### **Disposal of assets of former gas undertaker to require consent of Department**

**42.**—(1) A former gas undertaker shall not, after the coming into operation of this Article, dispose of any assets to which this paragraph applies without the consent of the Department; and any purported disposal by a former gas undertaker of any such assets after the coming into operation of this Article shall be void.

(2) Paragraph (1) applies to assets which—

- (a) are vested in the former gas undertaker immediately before the coming into operation of this Article; and
- (b) subsist, either wholly or mainly, for the purposes of, or in connection with, or are otherwise attributable to, the functions exercised by the former gas undertaker in its capacity as such.

(3) In this Article “former gas undertaker” means a gas undertaker which has entered into an agreement with the Department under Article 3 of the Gas (Northern Ireland) Order 1985 for the run-down and closure of its gas undertaking.

(4) For the purposes of paragraph (1) a person disposes of any asset if (whether for valuable consideration or not)—

- (a) he transfers or assigns any interest in, or right in respect of, that asset to another person;
- (b) he grants to any other person any right of possession, occupation or use of that asset;
- (c) he mortgages or charges that asset or creates any other encumbrance in respect of it; or
- (d) he deals in any other way with that asset so as to transfer or assign to, or create for the benefit of, any other person any interest in, or right in respect of, the asset.

### **Transfer to licence holder of assets and liabilities of former gas undertaker**

**43.**—(1) The Department may, with the consent of a licence holder, make a scheme for the transfer to the licence holder of such assets and liabilities of a former gas undertaker as are specified in the scheme.

(2) In this Article—

“former gas undertaker” has the same meaning as in Article 42;

“transferred assets” means the assets transferred under this Article;

“transfer scheme” means a scheme under paragraph (1);

“transfer date”, in relation to any transfer of assets or liabilities under this Article, means the date specified in the transfer scheme as the date on which the transfer is to take effect;

and any reference to assets and liabilities of a former gas undertaker is a reference to assets and liabilities—

- (i) to which the former gas undertaker is entitled or subject immediately before the transfer date, whether or not capable of being transferred or assigned by it; and
- (ii) which subsist, either wholly or mainly, for the purposes of, or in connection with, or are otherwise attributable to, the functions exercised by the former gas undertaker in its capacity as such.

(3) Assets and liabilities transferred to a licence holder by a transfer scheme shall on the transfer date become assets and liabilities of the licence holder by virtue of this paragraph; and a certificate issued by the Department that any asset or liability specified in the certificate is by virtue of this paragraph vested in the licence holder shall be conclusive evidence for all purposes of that fact.

(4) A transfer scheme—

- (a) may specify the assets and liabilities to be transferred by describing or identifying them in such manner as the Department considers appropriate;

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- (b) shall specify in relation to transferred assets the relevant period (being a period beginning on the transfer date) for the purposes of paragraph (5);
- (c) may provide for the payment by the licence holder to the Department in respect of the transfer of such sum or sums at such time or times as may be specified in, or determined by the Department in accordance with, the scheme;
- (d) may provide for the determination of any sum or sums payable to the Department under sub-paragraph (c) or paragraph (8);
- (e) may provide for the issue to the Department of securities of the licence holder for purposes connected with the scheme or its implementation;
- (f) may contain such supplementary, incidental and consequential provisions as the Department considers appropriate.

(5) A person (whether a licence holder or a successor in title) in whom any transferred assets are vested at any time during the relevant period specified under paragraph (4)(b) in relation to those assets shall not dispose of those assets before the end of that period without the consent of the Department; and any purported disposal by such a person of any such assets before the end of that period shall be void.

(6) Paragraph (4) of Article 42 applies for the purposes of paragraph (5) as it applies for the purposes of paragraph (1) of that Article.

(7) Paragraph (5) applies to assets which replace, extend or incorporate transferred assets as it applies to transferred assets; and a certificate issued by the Department that any assets do or do not fall within this paragraph shall be conclusive evidence for all purposes of this Article.

(8) A consent under paragraph (5) may be granted subject to such conditions as the Department considers appropriate, including conditions requiring the payment to the Department of such sum or sums at such time or times as may be determined by the Department in accordance with the scheme.

(9) Any sum payable to the Department under paragraph (4)(c) or (8) may be recovered by the Department in a court of competent jurisdiction as a civil debt due to it.

(10) Stamp duty shall not be chargeable on a transfer scheme or any transfer effected under this Article.

*Art. 44 rep. by 2003 NI 6*

### **Directions restricting the use of certain information**

**45.**—(1) The Department may give to any person who is authorised by a licence to convey gas from one place to another (“the authorised person”) such directions as appear to the Department to be requisite or expedient for the purpose of securing that, in any case where paragraph (2) applies, neither the person by whom the information mentioned in that paragraph is acquired nor any other person obtains any unfair commercial advantage from his possession of the information.

[<sup>F122</sup>(1A) The Department shall, in particular, issue such directions under paragraph (1) as appear to it to be requisite or expedient to ensure that a person who holds a licence under Article 8(1)(a) does not abuse or disclose information contrary to [<sup>F123</sup>Article 16 or 27] of the Directive.]

(2) This paragraph applies where, in the course of any dealings with an outside person who is, or is an associate of, a person authorised by a licence or exemption to convey, store or supply gas, the authorised person or any associate of his is furnished with or otherwise acquires any information which relates to the affairs of that outside person or any associate of his.

(3) As soon as practicable after giving any directions under paragraph (1), the Department shall publish a copy of the directions in such manner as the Department considers appropriate for the purpose of bringing the directions to the attention of persons likely to be affected by a contravention of them.

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(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 under 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 of that person.

(6) In any proceedings brought against any person under 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.

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

(8) In this Article—

“dealings” includes dealings entered into otherwise than for purposes connected with the conveyance of gas;

“outside person”, in relation to any person, means any person who is not an associate of his; and for the purposes of this Article a person is an associate of another if he and that other are connected with each other within the meaning of [<sup>F124</sup>section 1122 of the Corporation Tax Act 2010].

**F122** Art. 45(1A) inserted (1.10.2006) by [Gas Order 1996 \(Amendment\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/358\)](#), **reg. 11**

**F123** Words in art. 45(1A) substituted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 88**

**F124** Words in art. 45(8) 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(3)** (subject to Sch. 2)

### **Making of false statements, etc.**

**46.**—(1) If any person, in giving any information or making any application under or for the purposes of any [<sup>F125</sup> relevant provision], makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, he shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

[<sup>F125</sup>(1A) In paragraph (1) “relevant provision” means—

- (a) any provision of this Part or of any regulations made under this Part; and
- (b) any provision of the Energy (Northern Ireland) Order 2003 or of any regulations made under that Order.]

(2) Any person who seeks to obtain entry to any premises by falsely pretending to be an employee of, or other person authorised by, a licence holder, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) No proceedings shall be instituted in respect of an offence under paragraph (1) except by or with the consent of the Department or the Director of Public Prosecutions for Northern Ireland.

**F125** 2003 NI 6

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## *Supplemental*

### **Concurrent proceedings**

**47.**—(1) Where an application or a reference is made by a licence holder under this Part in connection with any matter, the proceedings which—

- (a) are required under this Part to be taken in relation to that application or reference; and
- (b) if applicable, are required by Articles 20 to 24 of the Planning (Northern Ireland) Order 1991 to be taken for the purpose of planning permission;

may, where the Department concerned so directs, be taken concurrently (so far as practicable).

(2) In this Article “the Department concerned” means the Department, or where the matter to which the application or reference relates is a function of some other Department, the Department and that other Department acting jointly.

### **Public inquiries**

**48.**—(1) The Department may cause an inquiry to be held in any case where the Department considers it advisable to do so in connection with<sup>F126</sup> any matter relating to gas arising under this Part or the Energy (Northern Ireland) Order 2003, other than a matter in respect of which any functions of the Authority under Part VI of that Order are or may be exercisable.]

(2) Without prejudice to section 23 of the Interpretation Act (Northern Ireland) 1954, the Department may make rules regulating the procedure to be followed in connection with inquiries held by or on behalf of the Department under this Part.

(3) Where—

- (a) an inquiry is to be held under this Part in connection with any matter; and
- (b) in the case of some other matter required or authorised (whether by this Part or by any other statutory provision) to be the subject of an inquiry (“the other inquiry”), it appears to the Department concerned that the matters are so far cognate that they should be considered together,

the Department concerned may direct that the inquiries be held concurrently or combined as one inquiry.

(4) In paragraph (3) “the Department concerned” means the Department, or where causing the other inquiry to be held is a function of some other Department, the Department and that other Department acting jointly.

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## PART III

### SAFETY

#### *Interpretation*

### **Interpretation of Part III**

**49.** In this Part—

*Status: Point in time view as at 12/04/2013. This version of this Order contains provisions that are not valid for this point in time.*

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“gas” means any substance which is in a gaseous state at a temperature of 15°C and a pressure of 1013.25 millibars and—

- (a) consists wholly or mainly of methane, ethane, propane, butane, hydrogen or carbon monoxide; or
- (b) is specified in an order made by the Department; or
- (c) consists wholly or mainly of—
  - (i) a mixture of two or more substances falling within paragraph (a) or (b); or
  - (ii) a combustible mixture of one or more such substances and air.

“in”, in a context referring to a pipe-line or a length thereof or works or operations in land, includes a reference to a pipe-line, length, works or operations under, over, across, along or upon it;

“owner”

- (a) in relation to any land, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion, and includes also a person holding or entitled to the rents and profits of the land under a lease or agreement the unexpired term of which exceeds 3 years;
- (b) in relation to a pipe-line, means the person in whom the pipe-line is vested;
- (c) in relation to a structure, means a person who, in relation to land being the site of the structure, is an owner thereof by virtue of paragraph (a) of this definition.

#### *Safety of pipe-lines*

*Arts. 50#54 rep. by SR 1997/193*

#### **Prohibition by Department of use or testing of pipe-line**

**55.**—(1) The Department may at any time by notice served on the owner of a pipe-line prohibit the use or testing of the pipe-line, or of any length of pipe-line, unless there are satisfied such requirements as may be specified in the notice for the purpose mentioned in paragraph (2).

(2) The purpose referred to in paragraph (1) is that of ensuring that funds are available to discharge any liability that may arise in respect of damage attributable to the release or escape of gas from the pipe-line or length.

(3) Paragraphs (3) to (5) of Article 50 shall apply in relation to a notice served under paragraph (1) of this Article as they apply in relation to a notice served under paragraph (1) of that Article.

(4) If a pipe-line is used or tested in contravention of a prohibition imposed by a notice under paragraph (1) then, unless he shows that he used due diligence to avoid contravention, the owner shall be guilty of an offence.

(5) A person guilty of an offence under this Article shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

*Arts. 56#58 rep. by SR 1997/193*

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### *Information, hearings and notices*

#### **Notification of abandonment, cesser of use and beginning or resumption of use of pipe-lines or lengths thereof**

- 59.**—(1) Subject to paragraph (2), in any of the following events, namely—
- (a) the beginning of the use of a pipe-line or a length thereof;
  - (b) the abandonment of a pipe-line or a length thereof;
  - (c) the expiration of 3 years from the date on which a pipe-line or a length thereof was last used;
  - (d) the resumption of the use of a pipe-line or a length thereof after the abandonment of the line or length (as the case may be) or after the expiration of 3 years from the date on which it was last used,

the owner of the line shall, within 2 weeks after the happening of the event, give to the Department notice thereof specifying the date on which it happened and the line or length in question.

(2) Where a pipe-line or a length thereof is abandoned after the date on which the line or length (as the case may be) was last used but before the expiration of 3 years from that date, it shall not be necessary to give, under paragraph (1), notice of the expiration of that period.

(3) A person who fails to comply with paragraph (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **Fire authority, police, etc., to be notified of certain pipe-line accidents and to be furnished with information**

**60.**—(1) It shall, in the case of every pipe-line, be the duty of the owner thereof to make, and to ensure the efficient carrying out of, arrangements whereby, in the event of the accidental escape or the ignition of any gas in the line, immediate notice of the event is given—

- (a) to [<sup>F127</sup>the Northern Ireland Fire and Rescue Service Board] ;
- (b) to the Royal Ulster Constabulary; and
- (c) to any other body which the Department, by notice served on the owner of the line, requires him to treat, for the purposes of this Article as relevant in relation to the line, being a body in the case of which it is stated in the notice that the Department is satisfied that it will or may have, in consequence of the happening of the event, to take in the public interest steps for such purpose as may be specified in the notice.

(2) It shall be the duty of the owner of a pipe-line if requested so to do by any body for whose notification, in the event specified in paragraph (1), arrangements are thereby required to be made, to furnish the body with such maps, and to give it such information, as it may reasonably require in order—

- (a) in the case of [<sup>F128</sup>the Northern Ireland Fire and Rescue Service Board] or the Royal Ulster Constabulary, to enable it efficiently to discharge the duties falling to be discharged by it in consequence of the happening of the event;
- (b) in the case of any other body which the owner is, by a notice served under paragraph (1) (c), required to treat, for the purposes of this Article as relevant in relation to the line, to enable it efficiently to take, in consequence of the happening of the event, steps for the purpose specified in the notice.

(3) A person who fails to comply with a duty imposed on him under paragraph (1) or (2) shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

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**F127** Words in art. 60(1) substituted (1.7.2006) by Fire and Rescue Services (Northern Ireland) Order 2006 (S.I. 2006/1254 (N.I. 9)), arts. 1(3), 63(1), **Sch. 3 para. 22** (with arts. 49, 62); S.R. 2006/257, **art. 2(b)(d)**

**F128** Words in art. 60(2) substituted (1.7.2006) by Fire and Rescue Services (Northern Ireland) Order 2006 (S.I. 2006/1254 (N.I. 9)), arts. 1(3), 63(1), **Sch. 3 para. 22** (with arts. 49, 62); S.R. 2006/257, **art. 2(b)(d)**

### **Notification of change of ownership of pipe-line**

**61.**—(1) Where a change occurs in the ownership of a pipe-line, the owner of the line shall, within 3 weeks from the date on which the change occurs, give to the Department and to every prescribed person or person of a prescribed class or description a notice stating the particulars of the change.

(2) A person who fails to comply with a duty imposed on him under paragraph (1) shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

### **Regulations as to hearings under this Part**

**62.** The Department may by regulations make provision as to the procedure to be followed in relation to any hearing under this Part.

### **Provisions as to requirements and prohibitions imposed under this Part**

**63.** Any power, exercisable by notice, conferred by this Part on the Department to impose a requirement or prohibition shall be construed as including a power, exercisable in the like manner, to vary or revoke the requirement or prohibition.

### *Miscellaneous*

*Art. 64 rep. by SR 1997/195*

### **Powers of entry**

**65.** Schedule 5 shall have effect.

## **PART IV SUPPLEMENTAL**

### **Repayment of fees**

**66.**—(1) Regulations under this Order which prescribe any fee for the purpose of any provision of this Order may make provision for the repayment of any such fee paid or purported to be paid, in pursuance of that provision of this Order, including provision—

- (a) that repayment shall be made only if a specified person is satisfied that specified conditions are met or in other circumstances;
  - (b) that repayment shall be made in part only;
  - (c) that, in the case of partial repayment, the amount repaid shall be a specified sum or determined in a specified manner; and
  - (d) for repayment of different amounts in different circumstances.
- (2) In this Article “specified” means specified in the regulations.

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## Compensation

67.—(1) Where any dispute arises as to whether compensation is payable under this Order, or as to the amount of any such compensation, or as to the persons to whom it is payable, the dispute shall be referred to and determined by the Lands Tribunal.

(2) Articles 4 and 5 of the Land Compensation (Northern Ireland) Order 1982 shall apply, with appropriate modifications, to any such determination.

## Application to Crown land

68.—(1) Subject to paragraphs (2) to (4), the provisions of this Order shall have effect in relation to Crown land as they have effect in relation to land which is not Crown land.

(2) The powers conferred by or under Schedule 2 shall not be exercisable in relation to Crown land, to the extent of the estate therein held by or on behalf of the Crown.

(3) The powers conferred by or under—

- (a) Schedules 2 and 3; and
- (b) subject to paragraph (4), Schedule 5,

shall not, except with the consent of the appropriate authority, be exercisable in relation to Crown land.

(4) The powers conferred by or under Schedule 5 shall, without the consent of the appropriate authority, be exercisable in relation to Crown land, to the extent of any estate therein for the time being held otherwise than by or on behalf of the Crown.

(5) For the purposes of paragraph (1) a Northern Ireland department may dispose of land vested in that department on such financial and other conditions as that department may consider appropriate.

(6) In this Article any reference to the Crown includes a reference to the Crown in right of Her Majesty's Government in Northern Ireland.

(7) In this Article—

“the appropriate authority”, in relation to any land, means—

- (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners;
- (b) in the case of any other land belonging to Her Majesty in right of the Crown, the government department having the management of that land;
- (c) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, that government department;

and, if any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Department of Finance and Personnel or, as the case may be, the Treasury, whose decision shall be final;

“Crown estate” means an estate—

- (a) belonging to Her Majesty in right of the Crown; or
- (b) belonging to a government department or held in trust for Her Majesty for the purposes of a government department;

“Crown land” means land in which there is a Crown estate.

(8) A person who is entitled to occupy Crown land by virtue of a licence in writing shall be treated for the purposes of this Article as having an estate in land.



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## Regulations and orders

**69.**—(1) Any regulations or orders made by the Department under this Order (other than vesting orders under Part I of Schedule 2 or orders to which paragraph (2) applies) shall be subject to negative resolution.

(2) The Statutory Rules (Northern Ireland) Order 1979 shall not apply to any order made by the Department under—

- (a) Article 7; or
- (b) paragraph 13(6) of Schedule 3.

(3) Any regulations made by the Director under this Order shall be laid before the Assembly by the Department and shall be subject to negative resolution.

(4) Regulations made under any provision of this Order may provide for the determination of questions of fact or of law which may arise in giving effect to the regulations and for regulating (otherwise than in relation to any court proceedings) any matters relating to the practice and procedure to be followed in connection with the determination of such questions, including provision—

- (a) as to the mode of proof of any matter;
- (b) as to parties and their representation;
- (c) for the right to appear before and be heard by the Department, the Director and other authorities; and
- (d) as to awarding costs of proceedings for the determination of such questions, including the amount of the costs and the enforcement of the awards.

(5) Regulations made under any provision of this Order which prescribe a period within which things are to be done may provide for extending the period so prescribed.

(6) Regulations made under any provision of this Order may—

- (a) provide for anything falling to be determined under the regulations to be determined by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons as may be prescribed;
- (b) make such supplemental, consequential and transitional provision as the Department or, as the case may be, the Director considers appropriate.

(7) Regulations made under any provision of this Order may provide that any person contravening the regulations shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### Modifications etc. (not altering text)

**C3** [Art. 69\(4\)-\(7\)](#) applied (21.3.2011) by [Energy Act \(Northern Ireland\) 2011 \(c. 6\), ss. 34\(4\), 36\(1\)](#); S.R. 2011/95, [art. 2](#)

## Directions

**70.**—(1) It shall be the duty of any person to whom a direction is given under this Order to give effect to that direction.

(2) Any power conferred by this Order to give a direction shall include power to vary or revoke the direction.

(3) Any direction given under this Order shall be in writing.

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## **Amendments, transitional provisions, savings and repeals**

### *Para. (1)—Amendments*

(2) Without prejudice to section 17(2) of the Interpretation Act (Northern Ireland) 1954, the Department may by order make such modifications of instruments made under statutory provisions as appear to the Department necessary or expedient in consequence of the provisions of this Order; and in this paragraph “instrument” has the meaning assigned to it by section 1 (c) of that Act of 1954.

(3) Without prejudice to sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954, the transitional and saving provisions in Schedule 7 shall have effect.

### *Para. (4)—Repeals*

(5) Any local or private Act shall, to the extent that it authorises or regulates, or otherwise makes provision in connection with, the supply of gas (within the meaning of Part II), cease to have effect.

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## SCHEDULES

*Schedule 1 rep. by 2003 NI 6*

### SCHEDULE 2

Article 13(1).

#### COMPULSORY ACQUISITION OF LAND

#### PART I

#### COMPULSORY ACQUISITION OF LAND BY LICENCE HOLDERS

1.—(1) Where a licence holder proposes to acquire, otherwise than by agreement, any land required for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, he may apply to the Department for an order (“a vesting order”) vesting that land in him and the Department shall have power to make a vesting order.

(2) The power of acquiring land compulsorily under this paragraph includes power to acquire, by the creation of a new right, an easement or other right over land.

2.—(1) No application shall be made under paragraph 1 for a vesting order in respect of land belonging to another licence holder except with the consent of the Director.

(2) The Director shall not give his consent under this paragraph if—

- (a) the land is being used by the licence holder to whom it belongs for the purposes of an installation necessary for the carrying on of the activities which he is authorised by his licence to carry on; or
- (b) it appears to the Director that the land will be so used and that the use will commence, or any necessary planning permission under Part IV of the Planning (Northern Ireland) Order 1991 will be applied for, within the period of 5 years from the date of the application for his consent.

(3) The Department may, by order, provide that sub-paragraph (2) shall have effect as if for the period mentioned in head (b) there were substituted such other period as may be specified in the order.

(4) A consent under this paragraph which is not acted on within the period of 6 months from the day on which it is granted shall cease to have effect at the end of that period.

3.—(1) The power to make a vesting order under paragraph 1 in respect of land—

- (a) which is the property of any public body which has power under any statutory provision to acquire land compulsorily; or
- (b) which is declared by or under any statutory provision to be inalienable;

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shall not, where representations objecting to the proposal for making the order have been duly made by the owner of the land and have not been withdrawn, be exercised in relation to that land unless the proposal for making the order has been approved by a resolution of the Assembly.

(2) In this paragraph “public body” means a body established by or under any statutory provision.

4.—(1) Nothing in this Schedule shall authorise the acquisition, without the consent of the Department of the Environment, of any land on or in which there is, to the knowledge of the Department, any historic monument or archaeological object.

(2) In this paragraph “historic monument” and “archaeological object” have the same meanings as in the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995.

5.—(1) Where a licence holder has acquired any land under paragraph 1, he shall not dispose of it except with the consent of the Director.

(2) A consent under this paragraph may be subject to such conditions as appear to the Director to be requisite or expedient.

6. Schedule 6 to the Local Government Act (Northern Ireland) 1972 shall apply for the purposes of the acquisition of land by means of a vesting order made under paragraph 1 in the same manner as it applies to the acquisition of land by means of a vesting order made under that Act subject to the following modifications—

- (a) for any reference to the council there shall be substituted a reference to the licence holder;
- (b) for any reference to the Department concerned there shall be substituted a reference to the Department;
- (c) for any reference to that Act there shall be substituted a reference to this Order;
- (d) in paragraph 6(2) for the words from “the fund” onwards there shall be substituted “funds of the licence holder (in this Schedule referred to as the compensation fund)”, and shall be discharged by payments made by the licence holder”; and
- (e) in paragraph 12(2) for “the clerk of the council” there shall be substituted “such person as may be designated for the purposes of this Schedule by the licence holder”.

## PART II

### LICENCE HOLDERS' LAND EXCLUDED FROM COMPULSORY ACQUISITION

7. Where—

- (a) an application for a vesting order is made by a person with power to acquire land otherwise than by agreement (other than a licence holder) in respect of land which includes land belonging to a licence holder and used for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on; and
- (b) that licence holder has made a representation to the Department concerned before the expiration of one month from the date of the last publication of the notice mentioned in paragraph 2(a) of Schedule 6 to the Local Government Act (Northern Ireland) 1972,

the Department concerned shall not make the vesting order unless the Department has certified—

- (i) that the land can be purchased and not replaced without serious detriment to the carrying on of those activities; or

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- (ii) that, if purchased, the land can be replaced by other land belonging to, or available for acquisition by, the licence holder without serious detriment to the carrying on of those activities.

### SCHEDULE 3

Article 13(1).

#### OTHER POWERS ETC., OF LICENCE HOLDERS

##### *Interpretation*

1.—(1) In this Schedule—

“controlled works” means any such works as are mentioned in paragraph 2(1) being works done under the right conferred by that paragraph;

“electrical plant” and “electric line” have the same meaning as in the Electricity (Northern Ireland) Order 1992;

“electricity licence holder” means the holder of a licence granted under Article 10 of the Electricity (Northern Ireland) Order 1992;

“emergency works” means—

- (a) in relation to a licence holder, work arising from faults in any gas apparatus;
- (b) in relation to an electricity licence holder for the purpose of paragraph 4, work arising from faults in any electric lines or electrical plant;
- (c) in relation to a government department for the purpose of paragraph 4, work requisite to put an end to, or prevent, the arising of circumstances which are likely to cause—
  - (i) danger to persons or property, or
  - (ii) interference with the exercise of any functions conferred on that department;
- (d) in relation to<sup>F129</sup> an electronic communications code operator] for the purpose of paragraph 4, work requisite to put an end to, or prevent, the arising of circumstances which are likely to cause—
  - (i) danger to persons or property, or
  - (ii) the interruption of any service provided by the<sup>F129</sup> electronic communications network] of the operator;

“gas apparatus” means—

- (a) pipes and other conduits for the conveyance of gas;
- (b) pressure governors, ventilators and other apparatus used for, or in connection with, the conveyance or supply of gas;

“in”, in a context referring to works or apparatus in a street or land, includes a reference to works or apparatus under, over, across, along or upon it;

“plan” includes section;

“planning permission” means planning permission under Part IV of the Planning (Northern Ireland) Order 1991;

“sewer” means a sewer as defined in the Water and Sewerage Services (Northern Ireland) Order <sup>F131</sup>2006];

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“street” has the same meaning as in the Street Works (Northern Ireland) Order 1995;

[<sup>F132</sup>“telecommunication apparatus” and “<sup>F133</sup>electronic communications network]” have the same meaning as in the Telecommunications Act 1984; ]

(2) In this Schedule, references to the alteration of any apparatus include references to the moving, removal or replacement of the apparatus.

(3) References in this Schedule to arbitration are to arbitration by an arbitrator appointed by agreement between the parties concerned or, in default of agreement, by the President of the Institution of Civil Engineers.

**F129** 2003 c. 21

**F130** Sch. 3 para. 1(1): definition of "public telecommunications operator" repealed (25.7.2003 for specified purposes, 29.12.2003 for specified purposes, otherwise prosp.) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19](#) (with [Sch. 18](#)); S.I. 2003/1900, art. 2(1), [Sch. 1](#) (with art. 3(1)); S.I. 2003/3142, [art. 3\(2\)](#)

**F131** Words in Sch. 3 para. 1(1) substituted (1.4.2007) by [The Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), art. 1(2), [Sch. 12 para. 36\(a\)](#) (with arts. 8(8), 121(3), 307; S.R. 2007/194, art. 2(2), [Sch. 1 Pt. 2](#) (with [Sch. 2](#)))

**F132** Sch. 3 para. 1(1): definition of "telecommunications apparatus" and "telecommunications system" repealed (25.7.2003 for specified purposes, 29.12.2003 for specified purposes, otherwise prosp.) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19](#) (with [Sch. 18](#)); S.I. 2003/1900, art. 2(1), [Sch. 1](#) (with art. 3(1)); S.I. 2003/3142, [art. 3\(2\)](#)

**F133** Sch. 3 para. 1(1): definition of "electronic communications network" subst. by (25.7.2003 for specified purposes, 29.12.2003 for specified purposes, otherwise prosp.) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 17 para. 142\(2\)\(b\)](#) (with [Sch. 18](#)); S.I. 2003/1900, art. 2(1), [Sch. 1](#) (with art. 3(1)); S.I. 2003/3142, [art. 3\(2\)](#)

**F134** Sch. 3 para. 1(1): definition of "telecommunications code" repealed (25.7.2003 for specified purposes, 29.12.2003 for specified purposes, otherwise prosp.) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19](#) (with [Sch. 18](#)); S.I. 2003/1900, art. 2(1), [Sch. 1](#) (with art. 3(1)); S.I. 2003/3142, [art. 3\(2\)](#)

### *Works involving breaking up streets*

2.—(1) Subject to the Street Works (Northern Ireland) Order 1995 and to the following provisions of this paragraph, for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, a licence holder may execute—

- (a) the following kinds of works, that is to say, installing in any street and inspecting, maintaining, adjusting, repairing or altering—
  - (i) any gas apparatus; and
  - (ii) any structures for housing or covering any such apparatus; and
- (b) any works requisite for or incidental to the purposes of any works falling within head (a), including for those purposes—
  - (i) opening or breaking up any street or any sewers, drains or tunnels in any street;
  - (ii) tunnelling or boring in any street; and
  - (iii) removing or using all earth and materials in any street.

(2) Nothing in this paragraph shall empower a licence holder to lay down or place any gas apparatus into, through or against any building, or in any land not dedicated to the public use, without the consent of the owners and occupiers thereof; but a licence holder may alter, repair or replace any existing apparatus in any land where the apparatus has been placed under this Order or any other statutory provision.

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*Alteration of apparatus, etc., under streets*

3.—(1) Subject to sub-paragraph (2), a licence holder may, subject to and in accordance with the provisions of this paragraph unless otherwise agreed upon between the parties, alter the position of—

- (a) any gas apparatus under the control of another licence holder;
- (b) any electric line or electrical plant under the control of an electricity licence holder;
- <sup>F135</sup>(bb) any relevant pipe (within the meaning of Article 219 of the Water and Sewerage Services (Northern Ireland) Order 2006) which is under the control of a water undertaker or a sewerage undertaker]
- (c) any <sup>F136</sup>electronic communications apparatus] used for the purposes of <sup>F136</sup>an electronic communications network] which is operated by a person to whom the <sup>F136</sup>electronic communications code] applies; or
- (d) any other apparatus <sup>F137</sup>(except any pipe forming part of any sewer)],

in any street which interferes with the exercise of his powers under this Schedule.

(2) In the case of an alteration under this paragraph of any <sup>F136</sup>electronic communications apparatus] used for the purposes of <sup>F136</sup>an electronic communications network] which is operated by a person to whom the <sup>F136</sup>electronic communications code] applies, paragraph 23 of the <sup>F136</sup>electronic communications code] shall apply instead of sub-paragraphs (3) to (13).

(3) One month before commencing the alterations, except where the alterations are emergency works, the licence holder shall—

- (a) serve a notice on the person for the time being entitled to the gas apparatus, electric line, electrical plant <sup>F138</sup>, pipe], <sup>F136</sup>electronic communications apparatus] or other apparatus (in this paragraph referred to as “the owners”) describing the proposed alterations; and
- (b) give any further information required by the owners.

(4) The notice mentioned in sub-paragraph (3) shall contain a plan showing the manner in which it is intended that the alterations shall be made.

(5) Within 3 weeks from the service of the notice mentioned in sub-paragraph (3) upon any owners, the owners may require, by requisition served on the licence holder, that any question arising upon the notice as to the works, or to compensation in respect thereof, or any other question shall, in default of agreement, be determined by arbitration.

(6) Where—

- (a) no requisition is served on the licence holder; or
- (b) after any requisition has been served, any question required to be determined by arbitration has been so determined,

the licence holder may, upon paying or securing any compensation which he may be required to pay or secure, carry out the alterations specified in the notice, but subject in all respects to the provisions of this Schedule, and only in accordance with the notice served by him or such modifications thereof as may have been determined by arbitration, or as may be agreed upon between the parties.

(7) At any time before the licence holder is entitled to commence any such alterations, the owners may serve a notice on the licence holder, stating that they desire to execute the alterations, and where any such notice has been served on the licence holder, he shall not be entitled to execute the alterations, except—

- (a) where the licence holder has required the owners to execute the alterations, and the owners have refused or neglected to comply; or
- (b) where the alterations are emergency works.

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(8) Where a notice such as is mentioned in sub-paragraph (7) has been served on the licence holder, he shall, not more than 48 hours and not less than 24 hours before the execution of the alterations is required to be commenced, serve on the owners a requisition stating the time when the alterations are required to be commenced, and the manner in which the alterations are required to be made.

(9) Upon receipt of any requisition, the owners may execute the alterations as required by the licence holder, subject to the restrictions and conditions, so far as they are applicable, to which the licence holder would be subject in executing the alterations.

(10) If the owners decline or, for 24 hours after the time when any such alterations are required to be commenced, neglect to comply with the requisition, the licence holder may execute the alterations in like manner as he might have done if notice had not been served on him under sub-paragraph (7) by the owners.

(11) Where any alterations are emergency works the licence holder may execute them without serving any requisition on the owners; but in that case the licence holder shall, within 24 hours after commencing to execute the alterations, give notice thereof to the owners.

(12) All expenses properly incurred by any owners in complying with any requisition of the licence holder under sub-paragraph (8) shall be a debt recoverable summarily by them from the licence holder.

(13) If the licence holder commences the execution of any work in contravention of sub-paragraph (3)(a), he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**F135** Sch. 3 para. 3(1)(bb) inserted (1.4.2007) by [The Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), art. 1(2), **Sch. 12 para. 36(b)** (with arts. 8(8), 121(3), 307; S.R. 2007/194, art. 2(2), Sch. 1 Pt. 2 (with **Sch. 2**))

**F136** 2003 c. 21

**F137** By [The Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), art. 1(2), **Sch. 12 para. 36(a)** (with arts. 8(8), 121(3), 307; S.R. 2007/194, art. 2(2), Sch. 1 Pt. 2 (with **Sch. 2**)), it is provided (1.4.2007) that in Sch. 3 "in paragraph 3(1)(c), the words in brackets" are repealed

**F138** Words in Sch. 3 para. 3(3)(a) inserted (1.4.2007) by [The Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), art. 1(2), **Sch. 12 para. 36(e)** (with arts. 8(8), 121(3), 307; S.R. 2007/194, art. 2(2), Sch. 1 Pt. 2 (with **Sch. 2**))

#### *Alteration of gas apparatus under streets*

4.—(1) An electricity licence holder, government department,<sup>[F139]</sup> electronic communications code operator], or other person (not being another licence holder) authorised under any statutory provision to exercise functions in relation to a street may, subject to and in accordance with the provisions of this paragraph unless otherwise agreed upon between the parties, alter the position of any gas apparatus under the control of a licence holder under that street which interferes with the exercise of those functions.

(2) Sub-paragraphs (3) to (12) of paragraph 3 shall apply for the purposes of sub-paragraph (1) of this paragraph as if—

- (a) any reference to the licence holder were a reference to the electricity licence holder, government department,<sup>[F139]</sup> electronic communications code operator] or other person, as the case may require; and
- (b) any reference to the owners were a reference to the licence holder.



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(3) If the electricity licence holder,<sup>F139</sup> electronic communications code operator] or, as the case may be, the other person commences the execution of any work in contravention of paragraph 3(3) (a) as applied by sub-paragraph (2) of this paragraph, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**F139** 2003 c. 21

*Controlled works in a street near to apparatus*

5.—(1) The following provisions of this paragraph apply where a licence holder requires to carry out any controlled works in a street near to—

- (a) any gas apparatus of any other licence holder;
- (b) any electric lines or electrical plant of any electricity licence holder; or
- (c) any<sup>F140</sup> electronic communications apparatus] which is operated by a person to whom the<sup>F141</sup> electronic communications code] applies; or
- (d) any other apparatus belonging to or under the jurisdiction or control of a government department or other person (not being a licence holder).

(2) Where the licence holder finds it necessary to undermine but not alter the position of any gas apparatus, electric line, electrical plant,<sup>F141</sup> electronic communications apparatus] or other apparatus he shall temporarily support it in position during the execution of the works, and before completion provide a suitable and proper foundation for it where so undermined.

(3) Any question arising under this paragraph shall, in default of agreement, be determined by arbitration.

**F140** fully exercised by SR 1996/216

**F141** 2003 c. 21

*Works in a street near to gas apparatus*

6.—(1) The following provisions of this paragraph apply where an electricity licence holder, government department,<sup>F142</sup> electronic communications code operator] or other person (not being a licence holder) requires to carry out any works in a street for laying down or constructing any electrical plant or electric lines or any<sup>F142</sup> electronic communications apparatus] or other apparatus near to any gas apparatus of a licence holder.

(2) Where the electricity licence holder, government department,<sup>F142</sup> electronic communications code operator] or other person finds it necessary to undermine but not alter the position of any gas apparatus he or it shall temporarily support the apparatus in position during the execution of the works, and before completion provide a suitable and proper foundation for it where so undermined.

(3) Where the electricity licence holder, government department,<sup>F142</sup> electronic communications code operator] or other person lays any electric line crossing or liable to touch any gas apparatus belonging to the licence holder, the conducting portion of the electric line shall be effectively insulated in a manner approved by the Department, and the electricity licence holder, government department,<sup>F142</sup> electronic communications code operator] or other person shall not, except with the consent of the licence holder and the Department—

- (a) lay the electric lines so as to come into contact with the gas apparatus; or
- (b) use the gas apparatus in connection with the supply of electricity.

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(4) Any question arising under this paragraph shall, in default of agreement, be determined by arbitration.

F142 2003 c. 21

#### *Emergency works*

7.—(1) Where any person would be required to serve any notice in respect of any works under paragraph 3 or 4 if the works were not emergency works, that person shall serve a notice in respect of the emergency works as soon as practicable after commencing the works.

(2) Failure to serve the notice required by sub-paragraph (1) shall be treated as a contravention of a requirement of the paragraph under which a notice would be required if the works were not emergency works.

#### *Protection from interference*

8.—(1) Subject to sub-paragraph (2), a licence holder who carries out any controlled works shall take all reasonable precautions for securing that those works do not interfere with the operation of any<sup>F143</sup> electronic communications apparatus] which—

- (a) is under the control of a person to whom the<sup>F143</sup> electronic communications code] applies; and
- (b) is not unusually sensitive to interference with its operation.

(2) In the case of any<sup>F143</sup> electronic communications apparatus] which is subsequently installed or altered or whose mode of operation is subsequently changed, the duty imposed by sub-paragraph (1) shall not apply in relation to—

- (a) any momentary interference with its operation; or
- (b) where it is installed in unreasonably close proximity to the gas apparatus, any other interference with its operation.

(3) Subject to sub-paragraph (4), a person to whom the<sup>F143</sup> electronic communications code] applies who installs or alters, or changes the mode of operation of, any<sup>F143</sup> electronic communications apparatus] shall take all reasonable precautions for securing that the operation of that apparatus does not interfere with the operation of any gas apparatus which—

- (a) is under the control of a licence holder; and
- (b) is not unusually sensitive to interference with its operation.

(4) In the case of any gas apparatus which is subsequently installed or altered or whose mode of operation is subsequently changed, the duty imposed by sub-paragraph (3) shall not apply in relation to—

- (a) any momentary interference with its operation; or
- (b) where it is installed in unreasonably close proximity to the<sup>F143</sup> electronic communications apparatus], any other interference with its operation.

(5) Any difference arising under this paragraph between a licence holder and a person to whom the<sup>F143</sup> electronic communications code] applies shall be determined by arbitration.

(6) In this paragraph “momentary interference” means any interference of momentary duration which is not a regular occurrence (whether caused by physical contact or otherwise).

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F143 2003 c. 21

*Modification of paragraphs 2 to 8*

9. The provisions of paragraphs 2 to 8 may be modified by regulations.

*Acquisition of wayleaves*

10.—(1) This paragraph applies where—

- (a) for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, it is necessary or expedient for a licence holder to install and keep installed any gas apparatus in any land; and
- (b) the owner or occupier of the land, having been given a notice under sub-paragraph (3),—
  - (i) has failed to give the necessary wayleave before the end of the period specified in that notice; or
  - (ii) has given the wayleave subject to terms and conditions to which the licence holder objects;

and in this paragraph as it so applies “the necessary wayleave” means consent for the licence holder to install and keep installed the gas apparatus in the land and to have access to the land for the purpose of inspecting, maintaining, adjusting, repairing or altering the apparatus,

(2) This paragraph also applies where—

- (a) for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, it is necessary or expedient for a licence holder to keep any gas apparatus installed in any land; and
- (b) the owner or occupier of the land has given notice to the licence holder under paragraph 12(2) requiring him to remove the apparatus;

and in this paragraph as it so applies “the necessary wayleave” means consent for the licence holder to keep the gas apparatus installed in the land and to have access to the land for the purpose of inspecting, maintaining, adjusting, repairing or altering the apparatus.

(3) The notice referred to in sub-paragraph (1)(b) shall—

- (a) state the licence holder's intention to install gas apparatus;
- (b) give a description of the nature of the apparatus and of the position and manner in which it is intended to be installed; and
- (c) require the owner or occupier of the land to give the necessary wayleave within a period (not being less than 21 days) specified in the notice.

(4) Subject to sub-paragraphs (5) to (7), the Department may, on the application of the licence holder, grant the necessary wayleave subject to such terms and conditions as the Department thinks fit; and a necessary wayleave so granted shall, unless previously terminated in accordance with a term contained in the wayleave, continue in force for such period as may be specified in the wayleave.

(5) The Department shall not grant a wayleave under sub-paragraph (4) in any case where the land in which the apparatus is to be installed is covered by a dwelling, or will be so covered on the assumption that any planning permission which is in force is acted on.

(6) Sub-paragraph (5) shall not apply to any land in respect of which a wayleave has been granted before the coming into operation of that sub-paragraph.

(7) Before granting a necessary wayleave, the Department shall afford—

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- (a) the occupier of the land; and
  - (b) where the occupier is not also the owner of the land, the owner,
- an opportunity of being heard by a person appointed by the Department.

(8) A necessary wayleave granted under this paragraph shall bind any person who is at any time the owner or occupier of the land.

(9) Where in pursuance of a necessary wayleave granted under this paragraph a licence holder has erected on any land supports for any gas apparatus, he shall be deemed to have an estate in that land for the purposes of section 40 of the Mineral Development Act (Northern Ireland) 1969.

(10) In this paragraph “dwelling” means a building or part of a building occupied, or (if not occupied) last occupied or intended to be occupied, as a private dwelling and includes any garden, yard, outhouses and appurtenances belonging to or usually enjoyed with that building or part.

*[<sup>F144</sup> Assignment of necessary wayleave*

**F144** 2003 NI 6

**10A.**—(1) Subject to the following provisions of this paragraph, a necessary wayleave granted under paragraph 10 shall be capable of being assigned if (and only if)—

- (a) in the case of a wayleave granted after the coming into operation of Article 64 of the Energy (Northern Ireland) Order 2003, a term to that effect is included in the wayleave;
  - (b) in the case of a wayleave granted before that time, it is designated by the Department on an application made by the relevant licence holder.
- (2) A necessary wayleave shall not be assigned—
- (a) without the consent of the Department; or
  - (b) to a person other than a licence holder.
- (3) The relevant licence holder shall—
- (a) give notice of an application under sub-paragraph (1)(b) to—
    - (i) the occupier of the land; and
    - (ii) where the occupier is not also the owner of the land, the owner; and
  - (b) send a copy of that notice to the Department, together with the name and address of each person to whom that notice has been given.
- (4) The notice under sub-paragraph (3) shall—
- (a) identify the wayleave and state that an application in respect of it has been made to the Department under sub-paragraph (1)(b); and
  - (b) specify a period (not being less than 28 days from the date on which the notice is given) during which representations or objections concerning the application may be made to the Department.
- (5) Before determining whether to designate a wayleave in pursuance of an application under sub-paragraph (1)(b), the Department shall consider any representations or objections which are duly made as mentioned in sub-paragraph (4)(b) and not withdrawn .
- (6) The Department shall give notice of its decision on an application under sub-paragraph (1)(b) to—
- (a) the relevant licence holder; and
  - (b) each person mentioned in sub-paragraph (3)(b).

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(7) In this paragraph—

“assign” includes transfer by any means;

“relevant licence holder”, in relation to a necessary wayleave, means the licence holder to whom the wayleave was granted or to whom it has been assigned.

(8) In paragraphs 11 and 12 references to a licence holder include references to a licence holder to whom a wayleave has been assigned.]

*Provisions supplementary to paragraph 10*

**11.**—(1) Where a wayleave is granted to a licence holder under paragraph 10—

(a) the occupier of the land; and

(b) where the occupier is not also the owner of the land, the owner,

may recover from the licence holder compensation in respect of the grant.

(2) Where in the exercise of any right conferred by such a wayleave any damage is caused to property, the licence holder shall make good or pay compensation in respect of that damage; and where in consequence of the exercise of such a right a person is disturbed in his enjoyment of any property the licence holder shall pay compensation in respect of that disturbance.

(3) Compensation under this paragraph may be recovered as a lump sum or by periodical payments or partly in one way and partly in the other.

*Temporary continuation of wayleaves*

**12.**—(1) This paragraph applies where at any time such a wayleave as is mentioned in paragraph 10 (whether granted under that paragraph or by agreement between the parties or otherwise)—

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

(b) is terminated by the owner or occupier of the land in accordance with a term contained in the wayleave; or

(c) by reason of a change in the ownership or occupation of the land after the granting of the wayleave, ceases to be binding on the owner or occupier of the land.

(2) The owner or occupier of the land may—

(a) in a case falling within sub-paragraph (1)(a), at any time after or within 3 months before the end of the period specified in the wayleave;

(b) in a case falling within sub-paragraph (1)(b), at any time after the wayleave has been terminated by him; or

(c) in a case falling within sub-paragraph (1)(c), at any time after becoming the owner or occupier of the land by virtue of such a change in the ownership or occupation of the land as is mentioned in that sub-paragraph,

give to the licence holder a notice requiring him to remove the gas apparatus from the land; but the licence holder shall not be obliged to comply with such a notice except in the circumstances and to the extent provided by the following provisions of this paragraph.

(3) Where within the period of 3 months from the date of the notice under sub-paragraph (2) the licence holder makes neither—

(a) an application for the grant of the necessary wayleave under paragraph 10; nor

(b) an application for a vesting order under paragraph 1 of Schedule 2 in respect of the land, the licence holder shall comply with the notice at the end of that period.

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(4) Where—

- (a) within the period mentioned in sub-paragraph (3) the licence holder makes an application for the grant of the necessary wayleave under paragraph 10; and
- (b) that application is refused by the Department,

the licence holder shall comply with the notice under sub-paragraph (2) at the end of the period of one month from the date of the Department's decision or such longer period as the Department may specify.

(5) Where—

- (a) within the period mentioned in sub-paragraph (3) the licence holder makes an application for a vesting order under paragraph 1 of Schedule 2 in respect of the land; and
- (b) that order is not made by the Department,

the licence holder shall comply with the notice under sub-paragraph (2) at the end of the period of one month from the date of the Department's decision or such longer period as the Department may specify.

*Felling and lopping of trees, etc.*

**13.—**(1) This paragraph applies where any tree is or will be in such close proximity to gas apparatus which is kept installed or is being or is to be installed by a licence holder as—

- (a) to obstruct or interfere with the installation, maintenance or working of the apparatus; or
- (b) to constitute an unacceptable source of danger (whether to children or to other persons);

and in this paragraph “the land” means the land on which the tree is growing.

(2) The licence holder may give notice to the occupier of the land requiring him to fell or lop the tree or cut back its roots so as to prevent it from having the effect mentioned in sub-paragraph (1) (a) or (b), subject to the payment to him by the licence holder of the expenses reasonably incurred by him in complying with the notice.

(3) Where the occupier is not also the owner of the land, a copy of any notice under sub-paragraph (2) shall also be served on the owner.

(4) If within 21 days from the giving of a notice under sub-paragraph 2—

- (a) the requirements of the notice are not complied with; and
- (b) neither the owner nor occupier of the land gives a counter notice under sub-paragraph (5),

the licence holder may cause the tree to be felled or lopped or its roots to be cut back so as to prevent it from having the effect mentioned in sub-paragraph (1)(a) or (b).

(5) If, within 21 days from the giving of a notice under sub-paragraph (2), the owner or occupier of the land gives a counter notice to the licence holder objecting to the requirements of the notice, the matter shall, unless the counter notice is withdrawn, be referred to the Department.

(6) On a reference under sub-paragraph (5), the Department after giving the parties an opportunity of being heard by a person appointed by the Department, may make such order as the Department thinks just, and any such order—

- (a) may empower the licence holder (after giving such notice to any person by whom a counter notice was given of the commencement of the work as the order may direct) to cause the tree to be felled or lopped or its roots to be cut back so as to prevent it from having the effect mentioned in sub-paragraph (1)(a) or (b); and
- (b) may determine any question as to what expenses (if any) are to be paid.

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(7) Where the licence holder exercises any powers conferred under sub-paragraph (4) or (6), he shall—

- (a) cause trees to be felled or lopped or their roots to be cut back in accordance with good arboricultural practice and so as to do as little damage as possible to trees, fences, hedges and growing crops;
- (b) cause felled trees, lopped boughs or root cuttings to be removed in accordance with the directions of the owner or occupier.

(8) In this paragraph “tree” includes any shrub and references to felling or lopping, felled trees or lopped boughs shall be construed accordingly.

#### *Entry on land for purposes of exploration*

**14.**—(1) Subject to the following provisions of this paragraph and without prejudice to any other right of entry, for the purpose of ascertaining whether the land would be suitable for use for any purpose connected with the carrying on of the activities which the licence holder is authorised by his licence to carry on, a person authorised in writing by a licence holder may, at any reasonable time, enter the land for the purpose of survey and valuation.

(2) A person authorised to enter upon any land under this paragraph shall not demand to do so as of right unless—

- (a) 14 days' notice of the intended entry has been given to the occupier; and
- (b) if required to do so, he has produced evidence of his authority.

(3) The powers conferred by this paragraph shall not be exercisable in relation to—

- (a) land which is covered by a dwelling or will be so covered on the assumption that any planning permission which is in force is acted on; or
- (b) land which is covered by a building (other than a dwelling) or will be so covered on the assumption that any planning permission which is in force is acted on except—
  - (i) with consent given by or on behalf of the occupier of the land; or
  - (ii) where the occupier has refused his consent, with the consent of the Department.

(4) The power to survey land conferred by this paragraph includes power to search and both for the purpose of ascertaining the nature of the subsoil; but works may not be carried out on the land for this purpose unless—

- (a) notice of the proposed works is included in the notice given under sub-paragraph (2); and
- (b) where land is held by statutory undertakers who object to the works on the ground that the carrying out of the works would be seriously detrimental to the carrying on of their undertaking, with the consent of the Department.

(5) Where it is proposed to search or bore in pursuance of this paragraph in a street within the meaning of the Street Works (Northern Ireland) Order 1995—

- (a) Article 15 of that Order (notice of starting date of works), so far as it requires notice to be given to a person having apparatus in the street which is likely to be affected by the works,
- (b) Article 29 of that Order (requirements to be complied with where works likely to affect another person's apparatus in the street), and
- (c) Article 42 of that Order (liability for damage or loss caused),

have effect in relation to the searching or boring as if they were street works within the meaning of that Order.

(6) In this paragraph—

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“building”, except in the definition of “dwelling”, includes any garden, yard, outhouses and appurtenances belonging to or usually enjoyed with a building;

“dwelling” means a building or part of a building occupied, or (if not occupied) last occupied or intended to be occupied, as a private dwelling;

“statutory undertakers” has the same meaning as in the Planning (Northern Ireland) Order 1991.

*Provisions supplementary to paragraphs 13 and 14*

**15.—(1)** Any person who intentionally obstructs a person acting in the exercise of any power conferred by or under paragraph 13 or 14 shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Where in the exercise of any power conferred by or under paragraph 13 or 14 any damage is caused to property the licence holder shall make good or pay compensation in respect of that damage; and where in consequence of the exercise of such a power a person is disturbed in his enjoyment of any property the licence holder shall pay compensation in respect of that disturbance.

VALID FROM 06/02/2015

<sup>F145</sup>SCHEDULE 3A

Article 14C

Procedure for appeals under Article 14B

**F145** Sch. 3A inserted (6.2.2015) by [Gas and Electricity Licence Modification and Appeals Regulations \(Northern Ireland\) 2015 \(S.R. 2015/1\)](#), reg. 3(3), **Sch. 1** (with reg. 5)

*Application for permission to bring appeal*

**1.—(1)** An application for permission to bring an appeal may be made only by sending a notice to the CMA requesting the permission.

(2) Only a person entitled under Article 14B to bring the appeal if permission is granted may apply for permission.

(3) Where the Authority publishes a decision to modify the conditions of any licence under Article 14(8), any application for permission to appeal is not to be made after the end of 20 working days after the day on which the decision is published.

(4) An application for permission to appeal must be accompanied by all such information as may be required by appeal rules.

(5) Appeal rules may require information contained in an application for permission to appeal to be verified by a statement of truth.

(6) A person who applies for permission to bring an appeal in accordance with this paragraph is referred to in this Schedule as the appellants.

(7) The appellants must send the Authority—

(a) a copy of the application for permission to appeal at the same time as it is sent to the CMA; and

(b) such other information as may be required by appeal rules.



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- (8) The CMA's decision whether to grant permission to appeal is to be taken by an authorised member of the CMA.
- (9) Before the authorised member decides whether to grant permission under this paragraph, the Authority must be given an opportunity of making representations or observations, in accordance with paragraph 3(2).
- (10) The CMA's decision on an application for permission must be made—
- (a) where the Authority makes representations or observations in accordance with paragraph 3(2), before the end of 10 working days after the day on which those representations or observations are received;
  - (b) in any other case, before the end of 14 working days after the day on which the application for permission is received.
- (11) The grant of permission may be made subject to conditions, which may include—
- (a) conditions which limit the matters that are to be considered on the appeal in question;
  - (b) conditions for the purpose of expediting the determination of the appeal; and
  - (c) conditions requiring that appeal to be considered together with other appeals (including appeals relating to different matters or decisions and appeals brought by different persons).
- (12) Where a decision is made to grant or to refuse an application for permission, an authorised member of the CMA must notify the decision, giving reasons—
- (a) to the appellant; and
  - (b) to the Authority.
- (13) A decision of the CMA under this paragraph must be published, in such manner as an authorised member of the CMA considers appropriate, as soon as reasonably practicable after it is made.
- (14) Article 14G(2) applies to the publication of a decision under sub-paragraph (13) as it does to the publication of a decision under Article 14G.

### *Suspension of decision*

- 2.—(1) The CMA may direct that, pending the determination of an appeal against a decision of the Authority—
- (a) the decision is not to have effect; or
  - (b) the decision is not to have effect to such extent as may be specified in the direction.
- (2) The power to give a direction under this paragraph is exercisable only where—
- (a) an application for its exercise has been made by the appellant at the same time that the appellant made an application in accordance with paragraph 1(3) for permission to bring an appeal against a decision of the Authority;
  - (b) the Authority has been given an opportunity of making representations or observations, in accordance with paragraph 3(2);
  - (c) the relevant licence holder, the licence holder or consumers whose interests are materially affected mentioned in Article 14B(2) (as the case may be) would incur significant costs if the decision were to have effect before the determination of the appeal; and
  - (d) the balance of convenience does not otherwise require effect to be given to the decision pending that determination.
- (3) The CMA's decision on an application for a direction under this paragraph must be made—

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- (a) where the Authority makes representations or observations in accordance with paragraph 3(2), before the end of 10 working days after the day on which those representations or observations are received;
  - (b) in any other case, before the end of 14 working days following the day on which the application under sub-paragraph (2)(a) is received.
- (4) The appellant must send the Authority a copy of the application for a direction under this paragraph at the same time as it is sent to the CMA.
- (5) The CMA's decision whether to give a direction is to be taken by an authorised member of the CMA.
- (6) A direction under this paragraph must be—
- (a) given by an authorised member of the CMA; and
  - (b) published, in such manner as an authorised member of the CMA considers appropriate, as soon as reasonably practicable after it is given.
- (7) Article 14G(2) applies to the publication of a direction under sub-paragraph (6) as it does to the publication of a decision under Article 14G.

#### *Time limit for representations and observations by the Authority*

- 3.—(1) Sub-paragraph (2) applies where the Authority wishes to make representations or observations to the CMA in relation to—
- (a) an application for permission to bring an appeal under paragraph 1;
  - (b) an application for a direction under paragraph 2.
- (2) The Authority must make the representations or observations in writing before the end of 10 working days after the day on which it received a copy of the application under paragraph 1(7) or 2(4) as the case may be.
- (3) Sub-paragraph (4) applies where an application for permission to bring an appeal has been granted and the Authority wishes to make representations or observations to the CMA in relation to—
- (a) the Authority's reasons for the decision in relation to which the appeal is being brought;
  - (b) any grounds on which that appeal is being brought against that decision.
- (4) The Authority must make the representations or observations in writing before the end of 15 working days after the day on which permission to bring the appeal was granted.
- (5) The Authority must send a copy of the representations and observations it makes under this paragraph to the appellant.

#### *Consideration and determination of appeal by group*

- 4.—(1) A group constituted by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 for the purpose of carrying out functions of the CMA with respect to an appeal under Article 14B must consist of three members of the CMA panel.
- (2) A decision of the group is effective if, and only if—
- (a) all the members of the group are present when it is made; and
  - (b) at least two members of the group are in favour of the decision.

#### *Matters to be considered on appeal*

- 5.—(1) The CMA, if it thinks it necessary to do so for the purpose of securing the determination of an appeal within the period provided for by Article 14F, may disregard—

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- (a) any or all matters raised by an appellant that were not raised by that appellant at the time of the relevant application; and
  - (b) any or all matters raised by the Authority that were not contained in representations or observations made for the purposes of the appeal in accordance with paragraph 3.
- (2) In this paragraph “relevant application” means an application under paragraph 1 or 2.

#### *Production of documents etc.*

6.—(1) For the purposes of this Schedule, the CMA may, by notice, require—

- (a) a person to produce to the CMA the documents specified or otherwise identified in the notice;
- (b) any person who carries on a business to supply to the CMA such estimates, forecasts, returns or other information as may be specified or described in the notice in relation to that business.

(2) The power to require the production of a document, or the supply of any estimate, forecast, return or other information, is a power to require its production or, as the case may be, supply—

- (a) at the time and place specified in the notice; and
- (b) in a legible form.

(3) No person is to be compelled under this paragraph to produce a document or supply an estimate, forecast, return or other information that the person could not be compelled to produce in civil proceedings in the High Court.

(4) An authorised member of the CMA may, for the purpose of the exercise of the functions of the CMA, make arrangements for copies to be taken of a document produced or an estimate, forecast, return or other information supplied under this paragraph.

(5) A notice for the purposes of this paragraph—

- (a) may be issued on the CMA's behalf by an authorised member of the CMA;
- (b) must include information about the possible consequences of not complying with the notice (as set out in paragraph 10).

#### *Oral hearings*

7.—(1) For the purposes of this Schedule an oral hearing may be held, and evidence may be taken on oath—

- (a) by a person considering an application for permission to bring an appeal under paragraph 1;
- (b) by a person considering an application for a direction under paragraph 2; or
- (c) by a group with the function of determining an appeal;

and, for that purpose, such a person or group may administer oaths.

(2) The CMA may, by notice, require a person—

- (a) to attend at a time and place specified in the notice; and
- (b) at that time and place, to give evidence to a person or group mentioned in subparagraph (1).

(3) At any oral hearing the person or group conducting the hearing may require—

- (a) the appellant, or the Authority, if present at the hearing to give evidence or to make representations or observations; or

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- (b) a person attending the hearing as a representative of the appellant or of the Authority to make representations or observations.
- (4) A person who gives oral evidence at the hearing may be cross-examined by or on behalf of any party to the appeal.
- (5) If the appellant, the Authority, or the appellant's or Authority's representative is not present at a hearing—
  - (a) there is no requirement to give notice to that person under sub-paragraph (2); and
  - (b) the person or group conducting the hearing may determine the application or appeal without hearing that person's evidence, representations or observations.
- (6) No person is to be compelled under this paragraph to give evidence which that person could not be compelled to give in civil proceedings in the High Court.
- (7) Where a person is required under this paragraph to attend at a place more than 10 miles from that person's place of residence, an authorised member of the CMA must arrange for that person to be paid the necessary expenses of attendance.
- (8) A notice for the purposes of this paragraph may be issued on the CMA's behalf by an authorised member of the CMA.

#### *Written statements*

- 8.—**(1) The CMA may, by notice, require a person to produce a written statement with respect to a matter specified in the notice to—
- (a) a person who is considering, or is to consider, an application for a direction under paragraph 2; or
  - (b) a group with the function of determining an appeal.
- (2) The power to require the production of a written statement includes power—
- (a) to specify the time and place at which it is to be produced; and
  - (b) to require it to be verified by a statement of truth;
- and a statement required to be so verified must be disregarded unless it is so verified.
- (3) No person is to be compelled under this paragraph to produce a written statement with respect to any matter about which that person could not be compelled to give evidence in civil proceedings in the High Court.
- (4) A notice for the purposes of this paragraph may be issued on the CMA's behalf by an authorised member of the CMA.

#### *Expert advice*

- 9.** Where permission to bring an appeal is granted under paragraph 1 the CMA may commission expert advice with respect to any matter raised by a party to that appeal.

#### *Defaults in relation to evidence*

- 10.—**(1) If a person (“the defaulter”)—
- (a) fails to comply with a notice issued or other requirement imposed under paragraph 6, 7 or 8;
  - (b) in complying with a notice under paragraph 8, makes a statement that is false in any material particular; or
  - (c) in providing information verified in accordance with a statement of truth required by appeal rules, provides information that is false in a material particular,

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an authorised member of the CMA may certify the failure, or the fact that such a false statement has been made or such false information has been given, to the High Court.

(2) The High Court may inquire into a matter certified to it under this paragraph; and if, after having heard—

- (a) any witness against or on behalf of the defaulter; and
- (b) any statement in that defaulter's defence,

it is satisfied that the defaulter did, without reasonable excuse, fail to comply with the notice or other requirement, or made the false statement, or gave the false information, that court may punish that defaulter as if the person had been guilty of contempt of court.

(3) Where the High Court has power under this paragraph to punish a body corporate for contempt of court, it may so punish any director or other officer of that body (either instead of or as well as punishing the body).

(4) A person who wilfully alters, suppresses or destroys a document that that person has been required to produce under paragraph 6 is guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

### *Appeal rules*

**11.—**(1) The CMA Board may make rules of procedure regulating the conduct and disposal of appeals under Article 14B.

(2) Those rules may include provision supplementing the provisions of this Schedule in relation to any application, notice, hearing, power or requirement for which this Schedule provides; and that provision may, in particular, impose time limits or other restrictions on—

- (a) the taking of evidence at an oral hearing; or
- (b) the making of representations or observations at such a hearing.

(3) The CMA Board must publish rules made under this paragraph in such manner as it considers appropriate for the purpose of bringing them to the attention of those likely to be affected by them.

(4) Before making rules under this paragraph, the CMA Board must consult such persons as it considers appropriate.

(5) Rules under this paragraph may make different provision for different cases.

### *Costs*

**12.—**(1) A group that determines an appeal must make an order requiring the payment to the CMA of the costs incurred by the CMA in connection with the appeal.

(2) An order under sub-paragraph (1) must require those costs to be paid—

- (a) where the appeal is allowed in full, by the Authority;
- (b) where the appeal is dismissed in full, by the appellant;
- (c) where the appeal is partially allowed, by one or more parties in such proportions as the CMA considers appropriate in all the circumstances.

(3) The group that determines an appeal may also make such order as it thinks fit for requiring a party to the appeal to make payments to another party in respect of costs reasonably incurred by that other party in connection with the appeal.

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(4) A person who is required by an order under this paragraph to pay a sum to another person must comply with the order before the end of the period of 28 days beginning with the day after the making of the order.

(5) Sums required to be paid by an order under this paragraph but not paid within the period mentioned in sub-paragraph (4) shall bear interest at such rate as may be determined in accordance with provision contained in the order.

(6) Any costs payable by virtue of an order under this paragraph and any interest that has not been paid may be recovered as a civil debt by the person in whose favour that order is made.

### *Interpretation of Schedule*

**13.—**(1) In this Schedule—

“appeal” means an appeal under Article 14B;

“appeal rules” means rules of procedure under paragraph 11;

“authorised member of the CMA”—

(a) in relation to a power exercisable in connection with an appeal in respect of which a group has been constituted by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013, means a member of that group who has been authorised by the chair of the CMA to exercise that power;

(b) in relation to a power exercisable in connection with an application for permission to bring an appeal, or otherwise in connection with an appeal in respect of which a group has not been so constituted by the chair of the CMA, means—

(i) any member of the CMA Board who is also a member of the CMA panel, or

(ii) any member of the CMA panel authorised by the Secretary of State (whether generally or specifically) to exercise the power in question;

“CMA Board” and “CMA panel” have the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013;

“statement of truth”, in relation to the production of a statement or provision of information by a person, means a statement that the person believes the facts stated in the statement or information to be true;

(2) References in this Schedule to a party to an appeal are references to—

(a) the appellant; or

(b) the Authority.]

*Schedule 4 rep. by SR 1997/193*

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## SCHEDULE 5

Article 65.

### POWERS OF ENTRY, ETC.

#### *Interpretation*

**1**<sup>F146</sup>. In this Schedule—

“gas fittings” means any fittings, apparatus and appliances designed for use by consumers of gas for heating, cooking, lighting, motive power and other purposes for which gas can be used;

“gas system”, in relation to any premises, means any service pipe or other apparatus (not being a gas fitting) which is on the premises and is used for the conveyance or supply of gas to the premises or is connected with a gas main;

“relevant authority”

(a) in relation to dangers arising from the conveyance of gas by a relevant licence holder, or from the use of gas conveyed by such a licence holder, means that licence holder or the Department; and

(b) in relation to dangers arising from the conveyance of gas by a person other than a relevant licence holder, or from the use of gas conveyed by such a person, means that person or the Department;

“relevant licence holder” means the holder of a licence under Article 8(1)(a);

“service pipe” means a pipe which is connected with a gas main for the purpose of conveying gas from that main to any premises.<sup>F147</sup>

**F146** prosp. renumbered by 2003 NI 6

**F147** prosp. insertion by 2003 NI 6

#### *Powers of entry, etc.*

**2.—(1)** The Department may by regulations make provision for empowering any person authorised by the relevant authority—

(a) to enter any premises in which there is a service pipe connected with a gas main for the purpose of inspecting any gas fitting on the premises, any flue or means of ventilation used in connection with any such gas fitting or any part of the gas system on the premises;

(b) where he so enters any such premises, to examine or apply any test to any such object as is mentioned in head (a) and (where the object is a gas fitting) to verify what supply of air is available for it; and

(c) where in his opinion it is necessary to do so for the purpose of averting danger to life or property, and notwithstanding any contract previously existing, to disconnect and seal off any gas fitting or any part of the gas system on the premises, or cut off the supply of gas to the premises.

(2) Regulations under this paragraph shall provide that the power of entry conferred by the regulations may only be exercised where the relevant authority has reasonable cause to suspect that there may be a danger to life or property in connection with the presence or use of gas on the premises in question.

(3) Where any regulations under this paragraph confer any power in accordance with subparagraph (1)(c), the regulations shall also include provision—

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- (a) for securing that, where any such power is exercised, the consumer will be notified as to the nature of the defect or other circumstances in consequence of which it has been exercised;
  - (b) for enabling any consumer so notified to appeal to the Department on the grounds that the defect or other circumstances in question did not constitute a danger such as to justify the action taken in the exercise of the power, or did not exist or have ceased to exist; and
  - (c) for enabling the Department to give such directions as may in accordance with the regulations be determined by it to be appropriate in consequence of any such appeal.
- (4) Regulations made under this paragraph may make provision for prohibiting any persons, except with the consent of the relevant authority or in pursuance of any directions given by the Department as mentioned in sub-paragraph (3)(c) from—
- (a) reconnecting any gas fitting or any part of any gas system which has been disconnected by or on behalf of the relevant authority in exercise of a power conferred by the regulations; or
  - (b) restoring the supply of gas to any premises where it has been cut off by or on behalf of the relevant authority in the exercise of any such power.

**3.—(1)** The Department may by regulations make provision—

- (a) for empowering any person authorised by a relevant licence holder, where that licence holder has reasonable cause to suspect—
    - (i) that gas conveyed by him is escaping, or may escape, in any premises; or
    - (ii) that gas so conveyed which has escaped has entered, or may enter, any premises, to enter the premises, to inspect the gas system and gas fittings, to carry out any work necessary to prevent the escape of gas and to take any other steps necessary to avert danger to life or property; and
  - (b) for empowering any person authorised by a relevant licence holder, where that licence holder has reasonable cause to suspect—
    - (i) that gas conveyed by some other person is escaping, or may escape, in any premises; or
    - (ii) that gas so conveyed which has escaped has entered, or may enter, any premises, to enter the premises and to take any steps necessary to avert danger to life or property.
- (2) As soon as reasonably practicable after any powers are exercised under sub-paragraph (b) of paragraph (1) by a person authorised by a relevant licence holder, that licence holder shall inform the other person referred to in head (i) of that sub-paragraph.
- (3) The Department may by regulations make provision for empowering any person authorised by it, if it has reasonable cause to suspect—
- (a) that gas conveyed by any person other than a relevant licence holder is escaping, or may escape, in any premises; or
  - (b) that gas so conveyed which has escaped has entered, or may enter, any premises, to enter the premises, to inspect the gas system and gas fittings, to carry out any work necessary to prevent the escape of gas and to take any other steps necessary to avert danger to life or property.

**4.—(1)** Any person authorised by a relevant licence holder may at all reasonable times, on the production of some duly authenticated document showing his authority, enter any premises to which gas is conveyed by that licence holder for the purpose of—

- (a) ensuring the safety of the gas system on those premises or of gas fittings; or
- (b) carrying out any necessary works of maintenance, repair or renewal of any part of the gas system on those premises;



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- (c) in the case of premises where the relevant licence holder has reason to believe that a compressor or compressed air or extraneous gas is being used, inspecting the premises and ascertaining whether any safety requirements imposed by the relevant licence holder on the consumer are being complied with.
- (2) In paragraph (1)—
- “compressor” means an engine, gas compressor or other similar apparatus or any apparatus liable to produce in any main of the relevant licence holder a pressure less than atmospheric pressure;
- “compressed air” means air at high pressure; and
- “extraneous gas” means any gaseous substance not conveyed by the relevant licence holder.
- (3) Any person authorised by a relevant licence holder, after 24 hours' notice to the owner of any unoccupied premises, may at all reasonable times, on production of some duly authenticated document showing his authority, enter those premises for the purpose of—
- (a) disconnecting any gas fitting or any part of the gas system on the premises or cutting off the supply of gas to the premises; and
- (b) removing any gas fitting or meter belonging to the licence holder.
- (4) The notice required to be given by sub-paragraph (3) may, where the owner of the premises is unknown and cannot be ascertained after diligent inquiry, be given by affixing it upon a conspicuous part of the premises not less than 48 hours before the premises are entered.
- (5) The powers conferred by this paragraph may only be exercised where the relevant licence holder has reasonable cause to suspect that there may be a danger to life or property in connection with the presence of gas on the premises in question.

#### *Exercise of powers of entry*

- 5.—(1) A power of entry conferred by or under this Schedule shall not be exercisable except—
- (a) with consent given by or on behalf of the occupier of the premises; or
- (b) under the authority of a warrant granted under paragraph 6;
- so, however, that this sub-paragraph shall not apply where entry is sought in the case of emergency.
- (2) Any person exercising powers of entry conferred by or under this Schedule may be accompanied by such other persons as may be necessary or expedient for the purpose for which the entry is made, or for the purposes of paragraph 7.

#### **Modifications etc. (not altering text)**

**C4** Sch. 5 paras. 5-8 applied (21.3.2011) by [Energy Act \(Northern Ireland\) 2011 \(c. 6\), ss. 14\(8\), 36\(1\); S.R. 2011/95, art. 2](#)

#### *Warrant to authorise entry*

- 6.—(1) Where a justice of the peace is satisfied by complaint on oath—
- (a) that admission to premises is reasonably required for the purpose specified in the complaint; and
- (b) that a duly authorised person would, apart from paragraph 5, be entitled for that purpose to exercise in respect of the premises a power of entry conferred by or under this Schedule; and

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(c) that—

- (i) the consent of the occupier has been refused or seeking that consent would defeat the object of the entry; or
- (ii) the premises are unoccupied;

he may issue a warrant under his hand authorising that duly authorised person to enter the premises.

(2) A warrant granted under this paragraph shall continue in force until—

- (a) the time when the purpose for which the entry is required is satisfied; or
- (b) the end of the period of 28 days from the day on which the warrant is granted,

whichever is the earlier.

**Modifications etc. (not altering text)**

C5 Sch. 5 paras. 5-8 applied (21.3.2011) by Energy Act (Northern Ireland) 2011 (c. 6), ss. 14(8), 36(1); S.R. 2011/95, art. 2

*Premises to be left secure and damage to be made good*

7. Where, under any powers conferred by or under this Schedule, entry is made on any premises by a duly authorised person—

- (a) he shall ensure that the premises are left no less secure by reason of the entry, and
- (b) the relevant authority or the relevant licence holder (as the case may be) shall make good or pay compensation for any damage to property caused by that person, or by any person accompanying him in entering the premises, in taking any action in the premises authorised by or under this Schedule or in making the premises secure.

**Modifications etc. (not altering text)**

C6 Sch. 5 paras. 5-8 applied (21.3.2011) by Energy Act (Northern Ireland) 2011 (c. 6), ss. 14(8), 36(1); S.R. 2011/95, art. 2

*Penalty for obstruction*

8. If any person intentionally obstructs any person exercising powers of entry conferred by or under this Schedule, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Modifications etc. (not altering text)**

C7 Sch. 5 paras. 5-8 applied (21.3.2011) by Energy Act (Northern Ireland) 2011 (c. 6), ss. 14(8), 36(1); S.R. 2011/95, art. 2

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## SCHEDULE 7

Article 71(3).

### TRANSITIONAL AND SAVING PROVISIONS

#### *Interpretation*

1.—(1) In this Schedule—

“appointed day”, in any provision, means the day appointed under Article 1(2) for the coming into operation of that provision;

“the 1977 Order” means the Gas (Northern Ireland) Order 1977;

“gas undertaker” means an undertaker within the meaning of the 1977 Order and “gas undertaking” means the undertaking of such an undertaker.

(2) Expressions used in this Schedule which are used in Part II of this Order have the same meaning as in that Part.

#### *Rundown and closure of former gas undertakers*

2. Except as provided by Articles 42 and 43, this Order does not affect the run-down and closure of any gas undertaking in accordance with an agreement entered into before the appointed day under Article 3 of the Gas (Northern Ireland) Order 1985; and the powers of the Department under Articles 5 and 6 of that Order shall continue to be exercisable in pursuance of such an agreement notwithstanding the repeal of the Order of 1985.

#### *Transitional arrangements for former gas undertakers becoming licence holders under this Order*

3.—(1) This paragraph applies to a person who—

(a) immediately before the appointed day is a gas undertaker; and

(b) before the end of the period of 3 months beginning with the appointed day, is granted a licence under Article 8.

(2) The 1977 Order shall, notwithstanding anything in this Order, continue to have effect in relation to a person to whom this paragraph applies until the day on which a licence is granted to him under Article 8.

(3) Where a person to whom this paragraph applies has, before the grant to him of a licence under Article 8, applied to the Department under Article 16 of the 1977 Order for an order vesting land in him, all proceedings under that Schedule in relation to that application may be continued and completed as if this Order had not been made.

(4) Any land compulsorily acquired by a person to whom this paragraph applies under Article 16 of the 1977 Order (whether by virtue of sub-paragraph (3) or otherwise) shall be treated for the purposes of this Order as compulsorily acquired under Part I of Schedule 2.

(5) Where, immediately before the grant to a person to whom this paragraph applies of a licence under Article 8, there is in force an agreement, deed, bond or other instrument which—

(a) confers or imposes on that person any rights or obligations; and

(b) refers (in whatever terms and whether expressly or by implication) to any provision of the 1977 Order, to that person's status as a gas undertaker or to the statutory purposes of his undertaking,

the instrument shall have effect, in relation to anything falling to be done after the grant of that licence, as if that reference included or, as the case may require, were a reference to any

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**Changes to legislation:** The Gas (Northern Ireland) Order 1996 is up to date with all changes known to be in force on or before 29 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

corresponding provision of this Order, to his status as a licence holder or to purposes connected with the activities authorised by his licence.

(6) Anything which, immediately before the grant to a person to whom this paragraph applies of a licence under Article 8, is in course of being done—

- (a) under the provisions relating to street works in Schedule 1 to the 1977 Order; or
- (b) with a view to, or otherwise in connection with, the granting of a consent under Article 13 of the 1977 Order,

by, to or in relation to that person (including any legal proceedings to which that person is a party) may be continued and completed under the 1977 Order as if this Order had not been made.

(7) Any street works executed by a person to whom this paragraph applies under the 1977 Order (whether by virtue of sub-paragraph (6) or otherwise) shall be treated for the purposes of this Order as executed under Schedule 3 to this Order.

(8) Any consent granted to a person to whom this paragraph applies under Article 13 of the 1977 Order (whether by virtue of sub-paragraph (6) or otherwise) shall be treated for the purposes of this Order as granted under Schedule 3 to this Order.

#### *Power to make further transitional provisions*

4. Without prejudice to Article 1(3), the Department may at any time by order make such further transitional provisions as seem to it to be necessary or expedient for the purposes of or in connection with the coming into operation (whether before or after the making of the order) of any provision of this Order.

#### *Schedule 8—Repeals*

**Status:**

Point in time view as at 12/04/2013. This version of this Order contains provisions that are not valid for this point in time.

**Changes to legislation:**

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