
STATUTORY INSTRUMENTS

1996 No. 275

The Gas (Northern Ireland) Order 1996

PART II

GAS SUPPLY AND ASSOCIATED ACTIVITIES

Licensing of supply of gas and associated activities

[^{F1}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 [^{F2}which apply to the holder];
 - (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;

Changes to legislation: *The Gas (Northern Ireland) Order 1996, Section 10B is up to date with all changes known to be in force on or before 23 January 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) View outstanding changes*

- (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.

^{F3}(9)

(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.

[
^{F4}(10A) An obligation is a public service obligation for the purposes of this Article if—

- (a) it is imposed by or under a statutory provision, and
- (b) the provision is identified in a notice issued by the Department as a provision imposing or enabling the imposition of, a public service obligation within the meaning of Article 3(2) of the Directive (as it had effect immediately before IP completion day).

(10B) For the purposes of paragraph (10A), the reference to Article 3(2) is to be read as if the reference in that provision to natural gas undertakings of the Community were a reference to natural gas undertakings of the United Kingdom.]

^{F5}(11)

(12) In this Article,

- (a) “relevant condition” means a condition included in a licence under [^{F6}Article 10A(3) or (17)] 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.]

F1	Art. 10B inserted (12.4.2013) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2013 (S.R. 2013/92), reg. 19
F2	Words in art. 10B(7)(b)(ii) substituted (31.12.2020) by The Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/530), regs. 1(1), 120(2) ; 2020 c. 1, Sch. 5 para. 1(1)
F3	Art. 10B(9) omitted (31.12.2020) by virtue of The Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/530), regs. 1(1), 120(3) ; 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation: *The Gas (Northern Ireland) Order 1996, Section 10B is up to date with all changes known to be in force on or before 23 January 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) View outstanding changes*

- F4** Art. 10B(10A)(10B) inserted (31.12.2020) by The Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/530), regs. 1(1), **120(4)** (as amended by S.I. 2020/1016, regs. 1(2), 3(37)); 2020 c. 1, Sch. 5 para. 1(1)
- F5** Art. 10B(11) omitted (31.12.2020) by virtue of The Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/530), regs. 1(1), **120(5)**; 2020 c. 1, Sch. 5 para. 1(1)
- F6** Words in art. 10B(12)(a) substituted (31.12.2020) by The Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/530), regs. 1(1), **120(6)**; 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation:

The Gas (Northern Ireland) Order 1996, Section 10B is up to date with all changes known to be in force on or before 23 January 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.

[View outstanding changes](#)

Changes and effects yet to be applied to :

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

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

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

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