
STATUTORY INSTRUMENTS

1996 No. 275

The Gas (Northern Ireland) Order 1996

PART II

GAS SUPPLY AND ASSOCIATED ACTIVITIES

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

^{F1}39A.—(1) A person who is or expects to be the holder of a licence may apply for any major [^{F2}pipe-line] (within the meaning of Article 35), any gas storage facility or any LNG facility whose operation is authorised by the licence and any modification of such a [^{F2}pipe-line] or facility to be exempt from a relevant requirement if paragraph (3) applies in relation to it.

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

- (a) in the case of an applicant who conveys or intends to convey gas through a gas transmission [^{F2}pipe-line], and who holds or expects to hold a licence under Article 8(1)(a), the requirement under Article 8B that he be certified at all times when he acts under the authority of the licence;
- (b) any condition specified in an order under Article 7(1)(c) or included in a licence under Article 10A insofar as it relates to compliance [^{F3}with provisions corresponding to those set out in Articles 32, 33 or 34 of the Directive]; and
- (c) any conditions specified in an order under Article 7(1)(c) or included in a licence under Article 10A insofar as it relates to the determination of tariffs or methods for the determination of tariffs for connection and access to [^{F4}pipe-lines] or facilities or the provision of balancing services,

insofar as the requirement relates to any [^{F2}pipe-line] or facility to which an application under paragraph (1) relates.

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^{F5}(2A) For the purposes of paragraph (2)(b)—

- (a) the reference to Article 32 of the Directive is to be read as a reference to that Article with the modifications set out in Article 10A(4) of this Order;
- (b) the reference to Article 33 of the Directive is to be read as a reference to that Article with the modifications set out in Article 10A(15)(b) of this Order;
- (c) the reference to Article 34 is to be read as a reference to that Article with the following modifications—
 - (i) references to “Member States” are to be read as references to “the Department”;
 - (ii) in paragraph (1), the final sentence is to be omitted;
 - (iii) in paragraph (2)(d), the reference to “Community law” is to be read as a reference to [^{F6}assimilated] law;

Changes to legislation: *The Gas (Northern Ireland) Order 1996, Section 39A is up to date with all changes known to be in force on or before 19 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) View outstanding changes*

(iv) paragraph (4) is to be omitted.]

(3) This Article applies to any [^{F2}pipe-line] or facility which is not yet operational and to any modification of a [^{F2}pipe-line] or facility which provides for a significant increase in capacity or is intended to enable the development of new sources of gas supply and which is not yet operational.

^{F7}(4)

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

[^{F8}(5A) For the purposes of paragraph (5), Article 36(1) of the Directive is to be read as if in point (e)—

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

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

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

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

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

- (a) terms specifying the period of the exemption or specifying how that period is to be determined;
- (b) terms on whether the exemption applies to all of the [^{F9}pipe-line] or facility to which the application relates or only a specified part thereof;
- (c) terms requiring charges to be imposed on users of the [^{F9}pipe-line] or facility and for specifying or determining the amount of those charges;
- (d) terms which ensure that the exemption is not detrimental to competition or the effective functioning of the market in gas in Northern Ireland or to the achievement of the objectives or the discharge of the general duties of the Authority and the Department under Part III of the Energy (Northern Ireland) Order 2003; and
- (e) such terms regarding non discriminatory access to the [^{F9}pipe-line] or facility in question as the Authority considers appropriate.

(7) An exemption given in accordance with this Article may apply to all the capacity of the [^{F9}pipe-line] or facility concerned or to part of the capacity only, regardless of the extent of the exemption applied for; but this is subject to paragraph (8).

(8) In respect of a [^{F9}pipe-line] or facility which is or is to be modified to provide for a significant increase in its capacity, an exemption by virtue of this Article may only be given in relation to that increase in its capacity or part of that increase in its capacity.

(9) Subject to the following provisions, an exemption may not be given by virtue of this Article more than once in respect of the same [^{F9}pipe-line] or facility.

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(10) Paragraph (9) does not prevent a further exemption being given in respect of any [^{F9}pipe-line] or facility or modification if that exemption has been revoked under Article 39B.

(11) Paragraph (9) does not prevent a further exemption being given in respect of a [^{F9}pipe-line] or facility if—

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

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

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| F1 | Arts. 39A 39B inserted (12.4.2013) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2013 (S.R. 2013/92) , reg. 30(1) |
| F2 | Word in art. 39A(1)-(3) substituted (16.12.2020) by The Gas (Internal Markets) Regulations (Northern Ireland) 2020 (S.R. 2020/279) , regs. 1, 5(f) |
| F3 | Words in art. 39A(2)(b) substituted (31.12.2020) by The Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/530) , regs. 1(1), 124(2) ; 2020 c. 1, Sch. 5 para. 1(1) |
| F4 | Word in art. 39A(2) substituted (16.12.2020) by The Gas (Internal Markets) Regulations (Northern Ireland) 2020 (S.R. 2020/279) , regs. 1, 6(b) |
| F5 | Art. 39A(2A) inserted (31.12.2020) by The Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/530) , regs. 1(1), 124(3) ; 2020 c. 1, Sch. 5 para. 1(1) |
| F6 | Word in art. 39A(2A)(c)(iii) substituted (1.1.2024) by The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) Regulations 2023 (S.I. 2023/1424) , reg. 1(2), Sch. para. 38(4) |
| F7 | Art. 39A(4) omitted (31.12.2020) by virtue of The Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/530) , regs. 1(1), 124(4) ; 2020 c. 1, Sch. 5 para. 1(1) |
| F8 | Art. 39A(5A)-(5D) substituted for art. 39A(5A) (31.12.2020) by The Gas (Amendment) (EU Exit) Regulations (Northern Ireland) 2020 (S.R. 2020/305) , regs. 1(2), 4(3) |
| F9 | Word in art. 39A(6)-(11) substituted (16.12.2020) by The Gas (Internal Markets) Regulations (Northern Ireland) 2020 (S.R. 2020/279) , regs. 1, 5(f) |

Changes to legislation:

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Changes and effects yet to be applied to :

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

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

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

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