

2006 No. 358

GAS

**Gas Order 1996 (Amendment) Regulations (Northern Ireland)
2006**

Made - - - - - *5th September 2006*

Coming into operation - *1st October 2006*

The Department of Enterprise, Trade and Investment, being a Department designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to measures relating to the regulation of the gas sector(b), in exercise of the powers conferred on it by the said section 2(2), and of every other power enabling it in that behalf, hereby makes the following Regulations:

PART I

INTRODUCTORY

Citation and commencement

1. These Regulations may be cited as the Gas Order 1996 (Amendment) Regulations (Northern Ireland) 2006 and shall come into operation on 1st October 2006.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(c) shall apply to these Regulations as it applies to an Act of the Assembly.

(2) In these Regulations—

“the Authority” means the Northern Ireland Authority for Energy Regulation;

“the 1996 Order” means the Gas (Northern Ireland) Order 1996(d);

“the Department” means the Department of Enterprise, Trade and Investment; and

“the Energy Order” means the Energy (Northern Ireland) Order 2003(e).

(a) 1972 c.68
(b) S.I. 2000/738
(c) 1954 c. 33 (N.I.)
(d) S.I. 1996/275 (N.I. 2)
(e) S.I. 2003/419 (N.I. 6)

PART II

AMENDMENTS TO THE GAS (NORTHERN IRELAND) ORDER 1996

Amendments

3. The 1996 Order shall be amended as provided in this Part.

Interpretation

4. In Article 3(1), for the definition of “the Directive” there shall be substituted the following definitions:-

“the Commission Decision” means Commission Decision PH(2005) 0791 granting a derogation from certain provisions of the Directive in respect of Northern Ireland;

“the Directive” means European Parliament and Council Directive 2003/55/EC concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC;”.

Licences

5.—(1) After Article 8(4) there shall be inserted the following paragraph—

“(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.”.

(2) After Article 8(7) there shall be inserted the following paragraphs—

“(7A) Where the Department or the Authority refuses to grant to any applicant a licence or an extension, the Department or Authority, as the case may be, 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), Article 24(2) of the Directive,

and published by it.

(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.”.

Time limits for exclusive licences

6.—(1) For Article 9(1A) there shall be substituted the following paragraph—

“(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 Article 9(3) for the words “Subject to Article 9A, where a licence” there shall be substituted the words “Subject to Article 9A, where a licence”.

(3) For Article 9(7) and (7A) there shall be substituted the following paragraphs—

“(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.”.

Limitation of rights under exclusive licences

7. For Article 9A there shall be substituted the following Article—

“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 Article 24(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.”.

Compliance with Community obligations

8. For Article 10A there shall be substituted the following Article—

“Compliance with Community obligations

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 pipeline, 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 6 of the Directive;

(c) require the licence holder to keep accounts in accordance with the requirements of Article 17 of the Directive and to have them audited in accordance with those requirements and 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 10 or 14 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 pipeline used under the licence, to adopt and follow rules which comply with the relevant requirements of Articles 8(2) and 12(5) of the Directive;
- (b) to comply with the requirements of Article 8(4) 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 12(1) of the Directive;
- (d) to refrain from discriminating between persons using or intending to use any pipeline, facility or associated apparatus operated for the purposes of the licence, contrary to Article 12(2) of the Directive;
- (e) to provide such persons with the information required by Article 12(4) of the Directive;
- (f) to provide any other licence holder mentioned in Article 12(3) of the Directive with the information required by that provision; and
- (g) to comply with the requirements for system access laid down by Article 18 of the Directive (as read with Article 2 of the Commission Decision).

(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) provide for the Authority to approve in advance of their coming into operation any terms and conditions—

- (a) for the connection and access to any pipeline, 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
- (b) for the provision of any balancing services.

(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 (within the meaning of the Directive)—

- (a) to whom Article 9(1) of the Directive applies, require that person to comply with the requirements referred to that provision for independence in terms of his legal form, organisation and decision making in relation to his activities under the licence and, in particular, to comply with the minimum criteria laid down by Article 9(2) of the Directive;
- (b) to whom Article 13(1) of the Directive applies, 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 13(2) of the Directive for independence in terms of its organisation and decision making, in particular the minimum criteria laid down thereby; and
- (c) who carries on the combination of activities to which Article 15 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 and meet the requirement of points (a) to (d) of that Article.

(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) or (b), as appropriate having regard to the activities authorised by the licence, require the holder—

- (a) to carry out the tasks laid down for him by Article 8(1) of the Directive;
- (b) to comply with the requirements for access to storage laid down by Article 19 of the Directive.

(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)(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 pipeline 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 23 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 and are able to use for the purpose procedures which comply with item (f) of Annex A to the Directive; and
- (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.”.

Dispute resolution

9. After Article 27 there shall be inserted—

“Dispute resolution

27A.—(1) Any person having a complaint (hereinafter referred to as “a complaint”) in relation to any decision, act or failure to act by a licence holder in relation to any matter falling within Article 25(1) to (4) of the Directive may make it under this Article.

(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.”.

Consent required for constructing major pipelines etc.

10. For Article 38A there shall be substituted the following Article—

“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.”.

Directions about information

11. After Article 45(1) there shall be inserted the following paragraph—

“(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 Article 10 or 14 of the Directive.”.

PART III

AMENDMENTS TO ENERGY ORDER

Amendments

12. The Energy Order shall be amended as provided in this Part.

Functions of the Department and the Authority

13.—(1) For Article 14(2)(a) there shall be substituted the following sub-paragraph—

“(a) the need to ensure a high level of protection of the interests of consumers of gas;”.

(2) For Article 14(5)(c) there shall be substituted the following sub-paragraph—

“(c) to secure a diverse, viable and environmentally sustainable long-term energy supply; and”.

(3) After Article 14(5) there shall be inserted the following paragraph—

“(5A) In carrying out their respective gas functions the Department or the Authority shall not discriminate between persons whose activities consist of or include storing, supplying or participating in the conveyance of gas as regards either rights or obligations.”.

(4) After Article 14(6) there shall be added the following paragraph—

“(7) For the purposes of paragraph (5)(c) environmental sustainability includes the need to guard against climate change.”.

Consequential Amendments

14.—(1) In Article 38(2), for the reference to Directive 98/30/EC concerning common rules for the internal market in natural gas there shall be substituted a reference to Directive 2003/55/EC concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC.

(2) the Schedule shall have effect for the purposes of making further consequential amendments to the Energy Order.

PART IV EXISTING LICENCES

Existing licences

15.—(1) The Department after consultation with the Authority, shall—

- (a) by notice in writing make such modifications to, or
- (b) require the Authority by notice in writing to make such modifications to,

an existing licence as the Department or the Authority, as the case may be, considers necessary or expedient having regard to the requirements and prohibitions laid down by the Directive.

(2) Before making modifications to an existing licence under paragraph (1)(a), the Department and before including modifications to an existing licence under paragraph (1)(b) the Authority, shall consult with the holder thereof.

(3) Modifications to an existing licence under paragraph (1) may, in particular, in the case of a licence under Article 8(1)(a) or (c) of the 1996 Order which confers on the holder exclusive authority to carry on designated activities, provide for the period specified in the licence under Article 9(1) of the 1996 Order to end on or before

- (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,

unless the conditions in paragraph (7A) of that Article for the continuation of such exclusive rights beyond that period apply.

(4) Modifications to an existing licence under paragraph (1) shall in particular ensure that any licence holder and any activity carried out by him under the licence and the construction or operation of any pipeline, facility or associated equipment used in connection with that activity after the date these Regulations come into operation meet the published criteria (within the meaning of Article 8(4A) of the 1996 Order).

(5) The Department shall not modify a licence under and in accordance with paragraph (3) so as to provide for any exclusive authority to carry on a designated activity to end on a date earlier than the date on which that authority would have ended but for the modification.

(6) Where the Department or Authority, as the case may be, is satisfied that it is necessary or expedient to do so in the interests of the efficient operation of any designated activity, it may instead of modifying a licence so that the exclusive authority to carry on that activity ends on the

date provided under and in accordance with paragraph (3) provide for the period specified in the licence under Article 9(1) to end on such later date as may be determined.

(7) A notice under paragraph (1) may in particular—

- (a) revoke or modify such conditions of; or
- (b) include such new conditions in,

an existing licence as the Department or the Authority, as the case may be, considers requisite or expedient for the purposes of that paragraph.

(8) Article 10A(2) to (7) of the 1996 Order shall apply in relation to the modification or revocation of the conditions of, and the inclusion of any new conditions in, an existing licence under this Regulation as it applies to the inclusion under that Article of any conditions in any other licence.

(9) Subject to Article 38(2) of the Energy Order, modifications made to a licence under this Regulation are without prejudice to the power of the Department, the Authority, the Secretary of State, the Office of Fair Trading or the Competition Commission, as the case may be, to further modify that licence under or in accordance with the 1996 Order or the Energy Order.

Duties of Department and Authority

16. Article 14 of the Energy Order shall apply in relation to the exercise by the Department and the Authority of any functions under this Part as it applies to the exercise of their functions under Part II of the 1996 Order.

Interpretation of Part IV

17. In this Part expressions which are also used in the 1996 Order shall have the same meaning as in that Order.

Revocation

18. The Gas Order 1996 (Amendment) Regulations (Northern Ireland) 2002 are hereby revoked.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 5th September 2006



Jenny Pyper
A senior officer of the
Department of Enterprise, Trade and Investment

SCHEDULE

Regulation 15(2)

CONSEQUENTIAL AMENDMENTS TO THE ENERGY ORDER

1. In Schedule 3, paragraph 24 is repealed.
2. In Schedule 5, in the entry relating to the Gas (Northern Ireland) Order 1996 (NI 2), the words “In Article 10A(2)(b) and (c) the words “(a) or”” are repealed.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations inter alia amend the Gas (Northern Ireland) Order 1996 (“the 1996 Order”) to ensure that it conforms with the requirements of Directive 2003/55/EC of the European Parliament and of the Council concerning common rules for the internal market in natural gas (“the Directive”). This Directive is to be read with Commission Decision PH(2005) 0791 (“the Commission Decision”) which grants derogations from Articles 18, 23(1)(b) and 24 in relation to supplies of gas to customers in certain geographical areas in Northern Ireland.

They revoke and replace the Gas Order 1996 (Amendment) Regulations (Northern Ireland) 2002 which implemented Community obligations under Directive 98/30/EC which was replaced by the Directive.

Part I contains certain introductory provisions.

Part II amends the 1996 Order, as follows—

- (a) Regulation 4 inserts a definition of the Directive and a definition of the Commission Decision in Part II of the 1996 Order.
- (b) Regulation 5 amends the Order to ensure that licences are granted in accordance with certain objective and non-discriminatory criteria and provides procedural safeguards for any applicant who is refused a licence;
- (c) Regulations 6 and 7 ensure consistency with the Directive as regards exclusive rights to carry on certain activities conferred by licence by:
 - (i) inserting an Article 9(1A) which automatically limits any exclusivity granted to a period of twenty years; but
 - (ii) inserting an Article 9(7) and (7A) which allow for an extension of exclusivity by consent beyond the period of twenty years where it is requisite or expedient to do so in the interests of the efficient operation of the activities in question;
 - (iii) inserting a new Article 9A which allows for the grant of a licence authorising supply to certain customers through a direct line even though such supply would otherwise contravene the exclusive rights given to another licence holder;
- (d) Regulation 8 inserts Article 10A requiring the inclusion of appropriate conditions in licences to ensure that the authorised activities comply with the requirements of the Directive;
- (e) Regulation 9 confers a dispute resolution function in relation to gas on the Northern Ireland Authority for Energy Regulation (“the Authority”).
- (f) Regulation 10 inserts an Article 38A which provides that consents or directions granted under Articles 35 to 38 are only granted where certain objective and non-discriminatory criteria are met, and provides procedural safeguards for the applicant who is refused such a consent or direction.

Part III in particular amends the gas functions of the Authority and the Department of Enterprise, Trade and Investment under Article 14 of the Energy (Northern Ireland) Order 2003 to ensure that they reflect the requirements of the Directive.

Part IV provides for the modification of licences already issued under the 1996 Order to ensure compliance with the provisions of the Directive.

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