
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 2(2) of the European Communities Act 1972. They make amendments to the electricity and gas regulatory regimes in Northern Ireland in order to implement, and address matters arising out of or related to, the requirements of Directive [2009/72/EC](#) of the European Parliament and of the Council concerning common rules for the internal market in electricity and repealing Directive [2003/54/EC](#) (“the Electricity Directive”) and Directive [2009/73/EC](#) of the European Parliament and of the Council concerning common rules for the internal market in natural gas and repealing Directive [2003/55/EC](#) (“the Gas Directive”).

Regulation 1 covers the citation and commencement of the Regulations. Regulation 2 contains the interpretation provision for the Regulations.

Regulation 3 amends Articles 10G (the ownership unbundling requirement) and 10I (monitoring and review of certification) of the Electricity (Northern Ireland) Order 1992 (“the 1992 Order”), which implement Article 9 of the Electricity Directive in respect of the ownership arrangements permitted for electricity transmission system operators. Regulation 3(2) amends Article 10G(1) and Regulation 3(3) inserts new paragraphs (13A) and (13B) in Article 10G. The amendments give the Northern Ireland Authority for Utility Regulation (“the Authority”) discretion to treat one or more of the five ownership unbundling tests in Article 10G as passed where the applicant demonstrates to the Authority’s satisfaction that the applicant’s relationship with a relevant producer/supplier (as defined in Article 10L(2) of the 1992 Order) would not lead the applicant to discriminate in favour of that producer/supplier. The new Article 10G(13B) limits that discretion by providing that it does not apply in circumstances where the applicant (or the person who controls or has a majority shareholding in the applicant) controls or has a majority shareholding in an electricity generator which is a relevant producer or supplier and the generating station is directly physically connected to the applicant’s transmission system. Regulation 3(4) inserts a new paragraph (12A) in Article 10I in order to extend the four month deadlines in that Article where additional information is requested as part of the review. Regulation 3(5) substitutes the definition of ‘review period’ in Article 10L of the 1992 Order so that it now reflects this extension.

Regulation 4 amends Articles 8G (the ownership unbundling requirement) and 8I (monitoring and review of certification) of the Gas (Northern Ireland) Order 1996 (“the 1996 Order”), which implement Article 9 of the Gas Directive in respect of the ownership arrangements permitted for gas transmission system operators. This regulation makes similar amendments to Articles 8G and 8I of the 1996 Order to those made to Articles 10G and 10I of the 1992 Order by regulation 3. Regulation 4(2) amends Article 8G(1) and regulation 4(3) inserts a new paragraph (13A) in Article 8G to give the Authority discretion to treat one or more of the five ownership unbundling tests in Article 8G as passed. Regulation 4(4) inserts a new paragraph (12A) in Article 8I in order to extend the four month deadlines in that Article where additional information is requested as part of the review. Regulation 4(5) substitutes the definition of ‘review period’ in Article 8L of the 1996 Order.

Regulation 5 specifies that these Regulations do not apply in respect of an application received by the Authority before the date on which these Regulations come into operation, or where a review pursuant to Article 8I of the 1996 Order or Article 10I of the 1992 Order has commenced before that date.