

*Draft Regulations laid before Parliament under paragraph 1(3) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2019 No. 0000**

**EXITING THE EUROPEAN UNION  
ENERGY**

**The Electricity and Gas etc. (Amendment  
etc.) (EU Exit) Regulations 2019**

*Made* - - - - *\*\*\**

*Coming into force in accordance with regulation 1*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(1).

In accordance with paragraph 1(3) of Schedule 7 to that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

**PART 1**

**Preliminary**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019 and come into force on exit day.

(2) An amendment, repeal or revocation made by Part 2, 3, or 4 of these Regulations has the same extent as the provision being amended, repealed or revoked.

## PART 2

### Amendment of primary legislation

#### Energy Act 1976

2. The Energy Act 1976(2) is amended as follows.
3. In section 3 (implementation of reserve powers), in subsection (1)(a), omit “the European Union or”.
4. In section 18 (administration, enforcement and offences), in subsection (2)—
  - (a) omit paragraph (c) and the “or” following it;
  - (b) omit paragraph (d)(i) and the “or” following it.
- 5.—(1) Schedule 2 (administration and other matters) is amended as follows.
  - (2) In paragraph 1 (power to obtain information), in sub-paragraph (2), omit “the European Union or”.
  - (3) In paragraph 7 (non-disclosure of information), in paragraph (c), omit “to any institution of the European Union, or”.
6. Omit Schedule 3 (EU obligations of which breach is punishable under this Act).

#### Gas Act 1986

7. The Gas Act 1986(3) is amended as follows.
- 8.—(1) Section 4AA (the principal objective and general duties of the Secretary of State and the Gas and Electricity Markets Authority) is amended as follows.
  - (2) In subsection (1A)(c)—
    - (a) for “functions as designated regulatory authority for Great Britain” substitute “designated regulatory functions”;
    - (b) for the words from “objectives” to “Directive” substitute “designated regulatory objectives”.
  - (3) In subsection (5B), at the appropriate place insert—
 

““the designated regulatory objectives” means the objectives set out in Article 40(c) to (h) of the Gas Directive but read with the following modifications—

    - (a) in Article 40(c), for the words from “between” to the end substitute “, including enabling the development of appropriate cross-border transmission capacities to meet demand;”,
    - (b) in Article 40(d), omit “, in line with general energy policy objectives;”,
    - (c) in Article 40(f), omit “and foster market integration”, and
    - (d) in Article 40(g), for “their national market” substitute “the energy market in Great Britain;”.
9. In section 4B (exceptions from sections 4AA to 4A), in subsection (4), after “any”, in the second place it occurs, insert “retained”.

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(2) 1976 c. 76. Relevant amendments were made by [S.I. 2011/1043](#).

(3) 1986 c. 44. Relevant amendments were made by the Utilities Act 2000 (c. 27) sections 9 and 12, the Energy Act 2010 (c. 27) section 16, and by [S.I. 2000/1937](#), [2009/1349](#), [2011/1043](#), [2011/2704](#) and [2014/3333](#).

**10.**—(1) Section 4C (duty of the Gas and Electricity Markets Authority as regards binding decisions of the Agency or European Commission) is amended as follows.

(2) Renumber the existing section as subsection (1).

(3) After subsection (1) insert—

“(2) For the purposes of subsection (1), a binding decision does not include a decision that is not, or so much of a decision as is not, retained EU law.”.

**11.**—(1) Section 4D (Gas and Electricity Markets Authority to consult and cooperate with other authorities) is amended as follows.

(2) In subsection (1)—

(a) for “functions as designated regulatory authority for Great Britain” substitute “designated regulatory functions”;

(b) in paragraph (a), for the words from “Agency” to “States” substitute “Northern Ireland Authority”;

(c) in paragraph (b)—

(i) for the words from “Agency and” to “States” substitute “Northern Ireland Authority”;

(ii) for “they” substitute “it”;

(iii) for the words from “their” to “to gas” substitute “its designated regulatory functions”.

(3) In subsection (2)—

(a) for the words from “designated” to “Britain” substitute “Northern Ireland Authority”;

(b) omit “, within that region,”;

(c) omit paragraph (a);

(d) in paragraph (d)—

(i) for “cross-border trade in gas” substitute “trade in gas between Great Britain and Northern Ireland”;

(ii) for “cross-border capacity” substitute “capacity between Great Britain and Northern Ireland”;

(e) omit paragraph (f) (but not the “and” following it).

(4) In subsection (3)—

(a) omit the definition of “network code”;

(b) omit the definition of “region” and the “and” following it.

**12.** In section 8D (application for certification), in subsection (3)—

(a) omit “on or after 3 March 2013”;

(b) for “third country”, in both places, substitute “country outside the United Kingdom”;

(c) in paragraph (a), omit “and the European Commission”;

(d) in paragraph (b)—

(i) omit “to the Secretary of State”;

(ii) omit “or any other EEA state”.

**13.**—(1) Section 8E (report where applicant connected with a country outside the European Economic Area) is amended as follows.

(2) In the heading, for “European Economic Area” substitute “United Kingdom”.

(3) In subsection (1), for “third country”, in both places, substitute “country outside the United Kingdom”.

(4) In subsection (2), omit “or any other EEA state”.

(5) In subsection (5)(b), omit “third”.

**14.** Notwithstanding the amendments of sections 8D and 8E of the Gas Act 1986 made by regulations 12 and 13, if an application under section 8D is made before exit day and the applicant is a person from an EEA state or a person controlled by a person from an EEA state—

(a) the Gas and Electricity Markets Authority is not required to notify the Secretary of State of the application under section 8D(3), and

(b) the Secretary of State is not required to prepare a report under section 8E in relation to the application.

**15.—**(1) Section 8F (certification) is amended as set out in paragraphs (2) to (5).

(2) In subsection (1)—

(a) omit “preliminary”;

(b) for “it should” substitute “to”.

(3) In subsection (4)—

(a) omit “preliminary”;

(b) after paragraph (a) insert “and”;

(c) omit paragraph (c) and the “and” before it.

(4) Omit subsections (5) to (8).

(5) After subsection (8) insert—

“(9) The Authority must publish its decision to certify or to refuse to certify the applicant, together with the reasons for it, in such manner as it considers appropriate.”.

(6) Where, immediately before exit day, the Gas and Electricity Markets Authority has made a preliminary decision under section 8F of the Gas Act 1986 on an application for certification, but not a final decision under Article 3 of 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, the Authority’s preliminary decision is to be treated on and after exit day as if it were a final decision under Article 3 made immediately before exit day.

(7) If a preliminary decision of the Gas and Electricity Markets Authority is treated as a final decision to certify, or to refuse to certify, an applicant because of paragraph (6), the Authority must publish, in such manner as it considers appropriate, a document setting out that decision and the reasons for it.

**16.—**(1) Section 8G (grounds for certification) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (a)—

(i) omit “preliminary”;

(ii) for “an applicant should be certified” substitute “to certify an applicant”;

(b) omit paragraph (b).

(3) In subsection (2)—

(a) omit “decide that the applicant should be certified, or”;

(b) omit “six”.

- (4) Omit subsection (6).
- (5) In subsection (7)(b), for the words from “requirement” to the end substitute—  
“requirement—
- (i) in accordance with Article 36 of the Gas Directive (new infrastructure) before exit day and remains entitled to the benefit of it, or
  - (ii) on the basis set out in Article 36(1) to (3) and (6) of the Gas Directive and remains entitled to the benefit of it.”.
- (6) In subsection (9)—
- (a) omit paragraph (a);
  - (b) in paragraph (b)—
    - (i) omit “must not decide that the applicant should be certified, and”;
    - (ii) omit “or any other EEA state”;
  - (c) omit paragraph (c).
- (7) After subsection (9) insert—
- “(10) For the purposes of subsection (4), Article 9(9) of the Gas Directive is to be treated as if the comparison with the provisions of Chapter 4 of the Gas Directive were a comparison with the provisions of Chapter 4 as they applied in relation to a member State immediately before exit day.
- (11) The references in subsection (5) to Article 14(1) and (2) of the Gas Directive are to be treated as references to those provisions with the following modifications—
- (a) Article 14(1) is to be read as if “Such designation shall be subject to approval by the Commission” were omitted;
  - (b) Article 14(2)(b) is to be read as if after “Article 13” there were inserted—  
“as implemented in relation to Great Britain immediately before exit day, disregarding for this purpose—
    - (i) paragraph 2,
    - (ii) paragraph 3 so far as relating to Article 41(6)(c), and
    - (iii) paragraph 4 except as it relates to such minimum standards, if any, as apply in Great Britain”;
  - (c) Article 14(2)(e) is to be read as if—
    - (i) for “Regulation (EC) No 715/2009” there were substituted “the Gas Regulation”, and
    - (ii) the words from “including” to the end were omitted.”.
- 17.—**(1) Section 8J (designation for the purposes of EU gas legislation) is amended as set out in paragraphs (2) to (5).
- (2) In the heading, for “EU gas legislation” substitute “the Gas Regulation”.
  - (3) In subsection (2)—
    - (a) omit “fourth,”;
    - (b) for the words from “Article” to “operators)” substitute “the Gas Regulation”.
  - (4) In subsection (3), for “that Article” substitute “the Gas Regulation”.
  - (5) In subsection (4)—
    - (a) after paragraph (a) insert “and”;

(b) omit paragraph (c) and the “and” preceding it.

(6) A person who is designated as a gas transmission system operator under section 8J of the Gas Act 1986 for the purposes of Article 10(2) of the Gas Directive immediately before exit day is to be treated, on and after exit day, as a person who is designated as a gas transmission system operator under section 8J for the purposes of the Gas Regulation, if and for so long as the person designated or (as the case may be) the person who nominated the person designated continues on and after exit day to hold a licence under section 7 or 7A of the Gas Act 1986 and to be certified under section 8F of that Act.

(7) In paragraph (6)—

“the Gas Directive” means [Directive 2009/73/EC](#) of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing [Directive 2003/55/EC](#)(4);

“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](#).

**18.**—(1) Section 8K (monitoring and review of certification) is amended as follows.

(2) In subsection (2)—

(a) omit “on or after 3 March 2013,”;

(b) for “third country” substitute “country outside the United Kingdom”;

(c) in paragraph (a), omit “and the European Commission”;

(d) in paragraph (b), omit “or any other EEA state”.

(3) Omit subsections (3) and (4).

(4) In subsection (5), omit “also”.

(5) In subsection (10), omit “(4),”.

**19.**—(1) Section 8M (report as to any connection of certified person with a country outside the European Economic Area) is amended as follows.

(2) In the heading, for “outside the European Economic Area” substitute “outside the United Kingdom”.

(3) In subsection (2), omit “or any other EEA state”.

(4) In subsection (5)(b), omit “third”.

**20.**—(1) Notwithstanding the amendments of sections 8K and 8M of the Gas Act 1986 made by regulations 18 and 19, if and for so long as the condition in paragraph (2) is satisfied in relation to the person—

(a) the Gas and Electricity Markets Authority is not required to notify the Secretary of State under section 8K(2) about a person from a country outside the United Kingdom who has taken control of a certified person before exit day, and

(b) the Secretary of State is not required to prepare a report under section 8M in relation to the certified person.

(2) The condition is that the person was a person from an EEA state at the time of taking control and has continued to be such a person.

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(4) O.J. L 211, 14.8.2009, p. 94.

**21.**—(1) Section 8N (continuation or withdrawal of certification) is amended as set out in paragraphs (2) to (9).

(2) In subsection (1)—

- (a) for “8K(3) or (5)” substitute “8K(5)”;
- (b) for “8K(4) or (6)” substitute “8K(6)”;
- (c) in paragraph (a)—
  - (i) omit “preliminary”;
  - (ii) for “that the certification should be continued” substitute “to continue the certification”;
- (d) in paragraph (b)—
  - (i) omit “preliminary”;
  - (ii) for “that the certification should be withdrawn” substitute “to withdraw the certification”.

(3) In subsection (2)—

- (a) omit “preliminary”;
- (b) for “that the certification should be continued” substitute “to continue the certification”.

(4) In subsection (3)—

- (a) in paragraph (a)—
  - (i) omit “preliminary”;
  - (ii) for “that the certification should be continued” substitute “to continue the certification”;
- (b) in paragraph (b)—
  - (i) omit “preliminary”;
  - (ii) for “that the certification should be withdrawn” substitute “to withdraw the certification”.

(5) In subsection (4)—

- (a) omit “preliminary”;
- (b) for “that the certification should be continued” substitute “to continue the certification”.

(6) In subsection (5)—

- (a) omit “preliminary”;
- (b) omit paragraph (b) and the “and” before it.

(7) Omit subsections (6) to (9).

(8) After subsection (9) insert—

“(9A) The Authority must publish its decision to continue a certification, or to withdraw a certification, together with the reasons for it, in such manner as it considers appropriate.”.

(9) In subsection (10)—

- (a) in the words before paragraph (a), for “8G(9)(a) and (b)” substitute “8G(9)(b)”;
- (b) in paragraph (a), for “8G(9)(a) and (b)” substitute “8G(9)(b)”.

(10) Where, immediately before exit day, the Gas and Electricity Markets Authority has made a preliminary decision under section 8N of the Gas Act 1986 on a review under section 8K(5) or (8), but not a final decision under Article 3 of 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, the Authority's preliminary decision is to be treated on and after exit day as if it were a final decision under Article 3 made immediately before exit day.

(11) If a preliminary decision of the Gas and Electricity Markets Authority is treated as a final decision to continue a certification, or to withdraw a certification, because of paragraph (10), the Authority must publish, in such manner as it considers appropriate, a document setting out that decision and the reasons for it.

- 22.** In section 8Q (interpretation of sections 8C to 8Q), in subsection (1)—
- (a) in the definition of “certified”, for the words from “taken” to “certified) by” substitute “certified by”;
  - (b) in the definition of “person from a third country”, for “third country”, in both places, substitute “country outside the United Kingdom”;
  - (c) omit the definition of “third country”.

**23.—**(1) Section 8R (independence of storage facilities) is amended as follows.

- (2) In subsection (2), for “an EEA state” substitute “the United Kingdom”.
- (3) In subsection (3), for “an EEA state” substitute “the United Kingdom”.
- (4) In subsection (4), for “an EEA state” substitute “the United Kingdom”.

**24.** In section 19A (application of section 19B to storage facilities), omit subsection (2C).

**25.—**(1) Section 19AA (review and revocation of exemptions under section 19A) is amended as follows.

- (2) In the heading, omit “Review and”.
- (3) Omit subsection (1).
- (4) Omit subsection (2).
- (5) In subsection (4)—
  - (a) in paragraph (a)—
    - (i) after “if” insert “before exit day”;
    - (ii) after “(1)” insert “(as it then had effect)”;
  - (b) in paragraph (b), after “if,” insert “before exit day and”;
  - (c) for paragraph (c) substitute—
    - “(c) if—
      - (i) before exit day the Authority sent the European Commission a copy of the exemption and terms under subsection (1) (as it then had effect), and
      - (ii) the European Commission does not act as described in paragraph (a) or (b) before exit day,
 the date 4 months after the Authority sent the European Commission a copy of the exemption and terms under subsection (1) or exit day, whichever is the sooner;”;
  - (d) after paragraph (c) insert—
    - “(d) if the decision to give the exemption was published under section 19A(11) on or after exit day, the date on which the decision was published under section 19A(11).”.

**26.** In section 19C (application of section 19D to LNG facilities), omit subsection (2C).



**27.**—(1) Section 19CA (review and revocation of exemptions under section 19C) is amended as follows.

- (2) In the heading, omit “Review and”.
- (3) Omit subsection (1).
- (4) Omit subsection (2).
- (5) In subsection (4)—
  - (a) in paragraph (a) —
    - (i) after “if” insert “before exit day”;
    - (ii) after “(1)” insert “(as it then had effect)”;
  - (b) in paragraph (b), after “if,” insert “before exit day and”;
  - (c) for paragraph (c) substitute—

“(c) if—

    - (i) before exit day the Authority sent the European Commission a copy of the exemption and terms under subsection (1) (as it then had effect), and
    - (ii) the European Commission does not act as described in paragraph (a) or (b) before exit day,

the date 4 months after the Authority sent the European Commission a copy of the exemption and terms under subsection (1) or exit day, whichever is the sooner;”;
  - (d) after paragraph (c) insert—

“(d) if the decision to give the exemption was published under section 19C(10) on or after exit day, the date on which the decision was published under section 19C(10).”.

**28.**—(1) Section 19D (acquisition of rights to use LNG facilities) is amended as follows.

- (2) In subsection (11B), for the words from “, within” to “that paragraph;” substitute “which applies to the owner;”.
- (3) After subsection (12) insert—

“(13) An obligation is a public service obligation for the purposes of this section if—

  - (a) it is imposed by or under a provision of an Act, and
  - (b) the provision is identified in a notice issued by the Secretary of State as a provision imposing, or enabling the imposition of, a public service obligation within the meaning of Article 3(2) of the Gas Directive (as it had effect immediately before exit day).

(14) For the purposes of subsection (13), 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.”.

**29.**—(1) Section 19DZA (duty to allow others to use LNG import or export facilities: exemptions in relation to take-or-pay commitments) is amended as follows.

- (2) In subsection (5)(b)(ii), for the words from “, within” to “that paragraph;” substitute “which applies to the owner;”.
- (3) After subsection (5) insert—

“(5A) In subsection (5)(b)(ii) “public service obligation” has the same meaning as in section 19D.”.

- (4) Omit subsection (7).
- (5) Omit subsection (9).

**30.** In the italic heading preceding section 27B, for “Article 41 Disputes” substitute “Section 27B disputes”.

**31.—**(1) Section 27B (meaning of “Article 41 dispute”) is amended as follows.

- (2) In the title, for ““Article 41”” substitute ““section 27B””.
- (3) In subsection (1)—
  - (a) for “an “Article 41 dispute”” substitute “a “section 27B dispute””;
  - (b) in paragraph (b), for the words from “under” to “Directive” substitute “which falls within subsection (2A)”.
- (4) After subsection (2) insert—
  - “(2A) An obligation of the person complained against falls within this subsection if it is—
    - (a) an obligation under a relevant condition or relevant requirement in relation to that person imposed before exit day for the purpose of implementing the Gas Directive, including such an obligation as modified on or after exit day, or
    - (b) an obligation under a relevant condition or relevant requirement in relation to that person imposed on or after exit day which, if it had been imposed immediately before exit day, would have been an obligation imposed for the purpose of implementing the Gas Directive.”.

**32.—**(1) Section 27C (determination of disputes) is amended as follows.

- (2) In subsection (1), for “An Article 41” substitute “A section 27B”.
- (3) In subsection (2), for “An Article 41” substitute “A section 27B”.
- (4) In subsection (3), for “an Article 41” substitute “a section 27B”.

**33.—**(1) Section 27D (time limit for determinations) is amended as follows.

- (2) In subsection (1), for “an Article 41” substitute “a section 27B”.
- (3) In subsection (4)(a), for “an Article 41” substitute “a section 27B”.

**34.—**(1) Section 34 (general functions of the Gas and Electricity Markets Authority) is amended as follows.

- (2) In subsection (2A)—
  - (a) in paragraph (b), for “and (r) to” substitute “, (r) and”;
  - (b) omit paragraph (d) (but not the “and” following it).
- (3) After subsection (2A) insert—
  - “(2B) For the purposes of subsection (2A)(c), the reference to Article 41(3)(a) is to be read as if the reference in that provision to Article 41 were a reference to Article 41 as implemented in Great Britain immediately before exit day.”.

**35.—**(1) In section 48 (interpretation of Part 1 and savings), subsection (1) is amended as follows.

- (2) Omit the definition of “designated regulatory authority”.
- (3) Omit the definition of “designated regulatory authority for Great Britain”.
- (4) At the appropriate place insert—

““designated regulatory function” means a function of the Authority or the Northern Ireland Authority conferred by—

- (a) a provision of retained EU law, as amended from time to time on or after exit day, or
- (b) a condition in a licence under section 7, 7ZA or 7A or Article 8 of the Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2)), as that condition is modified from time to time on or after exit day,

where that function was, immediately before exit day, one of its functions as a regulatory authority designated in accordance with Article 39 of the Gas Directive;”.

(5) At the appropriate place insert—

““Northern Ireland Authority” means the Northern Ireland Authority for Utility Regulation;”.

**36.** In Schedule 2AB (duties of supply exemption holders), in paragraph 7 (determination of disputes), for “an Article 41” substitute “a section 27B”.

**37.**—(1) Schedule 4B (provisions imposing obligations enforceable as relevant requirements) is amended as set out in paragraphs (2) and (3).

(2) In paragraph 3 (persons required to be certified as to independence), in paragraph (d), omit sub-paragraphs (i) to (iv).

(3) In paragraph 9 (gas undertakings which are relevant producers or suppliers)—

- (a) omit paragraph (e);
- (b) omit paragraph (f).

(4) For the purposes of sections 30A to 30O and 38 of the Gas Act 1986, a reference in Schedule 4B to the Gas Act 1986 to a provision of retained direct EU legislation is to be treated on or after exit day as including a reference to that provision as it had effect in EU law at any time before exit day.

## **Electricity Act 1989**

**38.** The Electricity Act 1989(5) is amended as follows.

**39.**—(1) Section 3A (the principal objective and general duties of the Secretary of State and the Gas and Electricity Markets Authority) is amended as follows.

(2) In subsection (1A)(c)—

- (a) for “functions as designated regulatory authority for Great Britain” substitute “designated regulatory functions”;
- (b) for the words from “objectives” to “Directive” substitute “designated regulatory objectives”.

(3) In subsection (5B), at the appropriate place insert—

““the designated regulatory objectives” means the objectives set out in Article 36(c) to (h) of the Electricity Directive but read with the following modifications—

- (a) in Article 36(c), for the words from “between” to the end substitute “, including enabling the development of appropriate cross-border transmission capacities to meet demand;”;
- (b) in Article 36(d), omit “, in line with general energy policy objectives;”;
- (c) in Article 36(f), omit “and foster market integration”, and

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(5) 1989 c. 29. Relevant amendments were made by the Utilities Act 2000 (c. 27) sections 13 and 16, the Energy Act 2010 (c. 27) section 17, and by S.I. 2009/1349, 2011/1043, 2011/2704, 2014/3333 and 2017/493.

- (d) in Article 36(g), for “their national market” substitute “the energy market in Great Britain”;

**40.** In section 3D (exceptions from sections 3A to 3C), in subsection (5), after “any”, in the second place it occurs, insert “retained”.

**41.—**(1) Section 3E (duty of the Gas and Electricity Markets Authority as regards binding decisions of the Agency or European Commission) is amended as follows.

(2) Renumber the existing section as subsection (1).

(3) After subsection (1) insert—

“(2) For the purposes of subsection (1), a binding decision does not include a decision that is not, or so much of a decision as is not, retained EU law.”.

**42.—**(1) Section 3F (Gas and Electricity Markets Authority to consult and cooperate with others) is amended as follows.

(2) In subsection (1)—

(a) for “functions as designated regulatory authority for Great Britain” substitute “designated regulatory functions”;

(b) in paragraph (a), for the words from “Agency” to “States” substitute “Northern Ireland Authority”;

(c) in paragraph (b)—

(i) for the words from “Agency and” to “States” substitute “Northern Ireland Authority”;

(ii) for “they” substitute “it”;

(iii) for the words from “their” to “to electricity” substitute “its designated regulatory functions”.

(3) In subsection (2)—

(a) for the words from “designated” to “Britain” substitute “Northern Ireland Authority”;

(b) omit “, within that region,”;

(c) omit paragraph (a);

(d) omit paragraph (f) (but not the “and” following it).

(4) In subsection (3)—

(a) omit the definition of “network code”;

(b) omit the definition of “region” and the “and” following it.

**43.** In section 10B (application for certification), in subsection (3)—

(a) omit “on or after 3 March 2013”;

(b) for “third country”, in both places, substitute “country outside the United Kingdom”;

(c) in paragraph (a), omit “and the European Commission”;

(d) in paragraph (b)—

(i) omit “to the Secretary of State”;

(ii) omit “or any other EEA state”.

**44.—**(1) — Section 10C (report where applicant connected with a country outside the European Economic Area) is amended as follows.

(2) In the heading, for “European Economic Area” substitute “United Kingdom”.

(3) In subsection (1), for “third country”, in both places, substitute “country outside the United Kingdom”.

(4) In subsection (2), omit “or any other EEA state”.

(5) In subsection (5)(b), omit “third”.

**45.** Notwithstanding the amendments of sections 10B and 10C of the Electricity Act 1989 made by regulations 43 and 44, where an application under section 10B is made before exit day and the applicant is a person from an EEA state or a person controlled by a person from an EEA state—

(a) the Gas and Electricity Markets Authority is not required to notify the Secretary of State of the application under section 10B(3), and

(b) the Secretary of State is not required to prepare a report under section 10C in relation to the application.

**46.—**(1) Section 10D (certification) is amended as set out in paragraphs (2) to (5).

(2) In subsection (1)—

(a) omit “preliminary”;

(b) for “it should” substitute “to”.

(3) In subsection (4)—

(a) omit “preliminary”;

(b) after paragraph (a) insert “and”;

(c) omit paragraph (c) and the “and” before it.

(4) Omit subsections (5) to (8).

(5) After subsection (8) insert—

“(9) The Authority must publish its decision to certify or to refuse to certify the applicant, together with the reasons for it, in such manner as it considers appropriate.”.

(6) Where, immediately before exit day, the Gas and Electricity Markets Authority has made a preliminary decision under section 10D of the Electricity Act 1989 on an application for certification, but not a final decision under Article 3 of Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network of cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003, the Authority’s preliminary decision is to be treated on and after exit day as if it were a final decision under Article 3 made immediately before exit day.

(7) If a preliminary decision of the Gas and Electricity Markets Authority is treated as a final decision to certify, or to refuse to certify, an applicant because of paragraph (6), the Authority must publish, in such manner as it considers appropriate, a document setting out that decision and the reasons for it.

**47.—**(1) Section 10E (grounds for certification) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (a)—

(i) omit “preliminary”;

(ii) for “an applicant should be certified” substitute “whether to certify an applicant”;

(b) omit paragraph (b).

(3) In subsection (2), omit “decide that the applicant should be certified, or”.

- (4) In subsection (8)—
- (a) omit paragraph (a);
  - (b) in paragraph (b)—
    - (i) omit “must not decide that the applicant should be certified, and”;
    - (ii) omit “or any other EEA state”;
  - (c) omit paragraph (c).
- (5) After subsection (8) insert—
- “(9) For the purposes of subsection (4), Article 9(9) of the Electricity Directive is to be treated as if the comparison with the provisions of Chapter 5 of the Electricity Directive were a comparison with the provisions of Chapter 5 as they applied in relation to a member State immediately before exit day.
- (10) For the purposes of subsection (5), the references to Article 13(1) and (2) of the Electricity Directive are to be treated as references to those provisions with the following modifications—
- (a) Article 13(1) is to be read as if “Such designation shall be subject to approval by the Commission” were omitted;
  - (b) Article 13(2)(b) is to be read as if the reference to Article 12 of the Electricity Directive were a reference to Article 12 with the omission of point (h);
  - (c) Article 13(2)(e) is to be read as if—
    - (i) for “Regulation (EC) No 714/2009” there were substituted “the Electricity Regulation”, and
    - (ii) the words from “including” to the end were omitted.”.
- 48.**—(1) Section 10H (designation for the purposes of EU electricity legislation) is amended as set out in paragraphs (2) to (5).
- (2) In the heading, for “EU electricity legislation” substitute “the Electricity Regulation”.
  - (3) In subsection (2), for the words from “Article” to “operators)” substitute “the Electricity Regulation”.
  - (4) In subsection (3), for “that Article” substitute “the Electricity Regulation”.
  - (5) In subsection (4)—
    - (a) after paragraph (a) insert “and”;
    - (b) omit paragraph (c) and the “and” preceding it.
  - (6) A person who is designated an electricity transmission system operator under section 10H of the Electricity Act 1989 for the purposes of Article 10(2) of the Electricity Directive immediately before exit day is to be treated, on and after exit day, as a person who is designated as an electricity transmission system operator under section 10H for the purposes of the Electricity Regulation, if and for so long as the person designated or (as the case may be) the person who nominated the person designated continues on and after exit day to hold a licence under section 6(1)(b) or (e) of the Electricity Act 1989 and to be certified under section 10D of that Act.
  - (7) In paragraph (6)—
 

“the Electricity Directive” means [Directive 2009/72/EC](#) of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing [Directive 2003/54/EC](#)(6);

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(6) O.J. L 211, 14.8.2009, p. 55.

“the Electricity Regulation” means Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003.

**49.**—(1) Section 10I (monitoring and review of certification) is amended as follows.

(2) In subsection (2)—

- (a) omit “on or after 3 March 2013,”;
- (b) for “third country” substitute “country outside the United Kingdom”;
- (c) in paragraph (a), omit “and the European Commission”;
- (d) in paragraph (b), omit “or any other EEA state”.

(3) Omit subsections (3) and (4).

(4) In subsection (5), omit “also”.

(5) In subsection (10), omit “(4),”.

**50.**—(1) Section 10K (report as to any connection of certified person with a country outside the European Economic Area) is amended as follows.

(2) In the heading, for “European Economic Area” substitute “United Kingdom”.

(3) In subsection (2), omit “or any other EEA state”.

(4) In subsection (5)(b), omit “third”.

**51.**—(1) Notwithstanding the amendments of sections 10I and 10K of the Electricity Act 1989 made by regulations 49 and 50, if and for so long as the condition in paragraph (2) is satisfied in relation to the person—

- (a) the Gas and Electricity Markets Authority is not required to notify the Secretary of State under section 10I(2) about a person from a country outside the United Kingdom who has taken control of a certified person before exit day, and
- (b) the Secretary of State is not required to prepare a report under section 10K in relation to the certified person.

(2) The condition is that the person was a person from an EEA state at the time of taking control and has continued to be such a person.

**52.**—(1) Section 10L (continuation or withdrawal of certification) is amended as set out in paragraphs (2) to (9).

(2) In subsection (1)—

- (a) for “10I(3) or (5)” substitute “10I(5)”;
- (b) for “10I(4) or (6)” substitute “10I(6)”;
- (c) in paragraph (a)—
  - (i) omit “preliminary”;
  - (ii) for “that the certification should be continued” substitute “to continue the certification”;
- (d) in paragraph (b)—
  - (i) omit “preliminary”;
  - (ii) for “that the certification should be withdrawn” substitute “to withdraw the certification”.

(3) In subsection (2)—

- (a) omit “preliminary”;
  - (b) for “that the certification should be continued” substitute “to continue the certification”.
- (4) In subsection (3)—
- (a) in paragraph (a)—
    - (i) omit “preliminary”;
    - (ii) for “that the certification should be continued” substitute “to continue the certification”;
  - (b) in paragraph (b)—
    - (i) omit “preliminary”;
    - (ii) for “that the certification should be withdrawn” substitute “to withdraw the certification”.
- (5) In subsection (4)—
- (a) omit “preliminary”;
  - (b) for “that the certification should be continued” substitute “to continue the certification”.
- (6) In subsection (5)—
- (a) omit “preliminary”;
  - (b) omit paragraph (b) and the “and” before it.
- (7) Omit subsections (6) to (9).
- (8) After subsection (9) insert—
- “(9A) The Authority must publish its decision to continue a certification, or to withdraw a certification, together with the reasons for it, in such manner as it considers appropriate.”.
- (9) In subsection (10)—
- (a) in the words before paragraph (a), for “10E(8)(a) and (b)” substitute “10E(8)(b)”;
  - (b) in paragraph (a), for “10E(8)(a) and (b)” substitute “10E(8)(b)”.
- (10) Where, immediately before exit day, the Gas and Electricity Markets Authority has made a preliminary decision under section 10L of the Electricity Act 1989 on a review under section 10I(5) or (8), but not a final decision under Article 3 of Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network of cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003, the Authority’s preliminary decision is to be treated on and after exit day as if it were a final decision under Article 3 made immediately before exit day.
- (11) If a preliminary decision of the Gas and Electricity Markets Authority is treated as a final decision to continue a certification, or to withdraw a certification, because of paragraph (10), the Authority must publish, in such manner as it considers appropriate, a document setting out that decision and the reasons for it.
- 53.** In section 10O (interpretation of sections 10A to 10O), in subsection (1)—
- (a) in the definition of “certified”, for the words from “taken” to “certified) by” substitute “certified by”;
  - (b) in the definition of “person from a third country”, for “third country”, in both places, substitute “country outside the United Kingdom”;
  - (c) omit the definition of “third country”.
- 54.** In section 25 (orders for securing compliance), in subsection (8), in the definition of “regulated person”, omit paragraph (e).



**55.** In the italic heading preceding section 44B, for “Article 37 Disputes” substitute “Section 44B disputes”.

**56.**—(1) Section 44B (meaning of “Article 37 dispute”) is amended as follows.

(2) In the title, for ““Article 37” substitute ““section 44B”.

(3) In subsection (1)—

(a) for “an “Article 37 dispute”” substitute “a “section 44B dispute””;

(b) in paragraph (b), for the words from “under” to “Directive” substitute “which falls within subsection (2A)”.

(4) After subsection (2) insert—

“(2A) An obligation of the person complained against falls within this subsection if it is—

(a) an obligation under a relevant condition or relevant requirement in relation to that person imposed before exit day for the purpose of implementing the Electricity Directive, including such an obligation as modified on or after exit day, or

(b) an obligation under a relevant condition or relevant requirement in relation to that person imposed on or after exit day which, if it had been imposed immediately before exit day, would have been an obligation imposed for the purpose of implementing the Electricity Directive.”.

**57.**—(1) Section 44C (determination of disputes) is amended as follows.

(2) In subsection (1), for “An Article 37” substitute “A section 44B”.

(3) In subsection (2), for “An Article 37” substitute “A section 44B”.

(4) In subsection (3), for “an Article 37” substitute “a section 44B”.

**58.**—(1) Section 44D (time limit for determinations) is amended as follows.

(2) In subsection (1), for “an Article 37” substitute “a section 44B”.

(3) In subsection (6)(a), for “an Article 37” substitute “a section 44B”.

**59.** In section 47 (general functions of the Gas and Electricity Markets Authority), after subsection (1C) insert—

“(1D) The references in subsection (1C) to the following provisions of the Electricity Directive are to be treated as references to those provisions with the following modifications—

(a) Article 37(1)(q) is to be read as if for “Regulation (EC) No 714/2009” there were substituted “the Electricity Regulation”;

(b) Article 37(1)(s) is to be read as if—

(i) the words “Community and third country” were omitted, and

(ii) after “operators” there were inserted “in the United Kingdom and transmission system operators in countries outside the United Kingdom”;

(c) Article 37(1)(t) is to be read as if the reference to Article 42 were to Article 42 with the omission of the words from “must cause” to “market and”;

(d) Article 37(3)(f) is to be read as if for “Regulation (EC) No 714/2009” there were substituted “the Electricity Regulation”.”.

**60.**—(1) In section 64 (interpretation of Part 1), subsection (1) is amended as follows.

- (2) Omit the definition of “the CACM Regulation”.
- (3) Omit the definition of “designated regulatory authority”.
- (4) Omit the definition of “designated regulatory authority for Great Britain”.
- (5) Omit the definition of “nominated electricity market operator”.
- (6) At the appropriate place insert—
- ““designated regulatory function” means a function of the Authority or the Northern Ireland Authority conferred by—
- (a) a provision of retained EU law, as amended from time to time on or after exit day, or
- (b) a condition in a licence under section 6 or Article 10 of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)), as that condition is modified from time to time on or after exit day,
- where that function was, immediately before exit day, one of its functions as a regulatory authority designated in accordance with Article 35 of the Electricity Directive;”.
- (7) At the appropriate place insert—
- ““Northern Ireland Authority” means the Northern Ireland Authority for Utility Regulation;”.

**61.** In Schedule 2ZB (duties of supply exemption holders), in paragraph 8 (determination of exempt supply disputes), for “an Article 37” substitute “a section 44B”.

**62.**—(1) Schedule 6A (provisions imposing obligations enforceable as relevant requirements) is amended as set out in paragraphs (2) to (4).

- (2) In paragraph 4 (persons required to be certified as to independence)—
- (a) in paragraph (d), omit sub-paragraphs (i) to (v);
- (b) in paragraph (e)—
- (i) in sub-paragraph (i), for “1.9” substitute “1.7”;
- (ii) omit sub-paragraph (iii);
- (iii) in sub-paragraph (iv), for “4.4” substitute “4.3”;
- (iv) in sub-paragraph (vi), omit “6.3.”.
- (3) In paragraph 9 (electricity undertakings which are relevant producers or suppliers)—
- (a) omit paragraph (e);
- (b) omit paragraph (f).
- (4) Omit paragraph 9B (nominated electricity market operators).
- (5) For the purposes of sections 27A to 28 of the Electricity Act 1989, a reference in Schedule 6A to the Electricity Act 1989 to a provision of retained direct EU legislation is to be treated on and after exit day as including a reference to that provision as it had effect in EU law at any time before exit day.

## Utilities Act 2000

**63.** The Utilities Act 2000(7) is amended as follows.

**64.**—(1) Section 3A (designation of Gas and Electricity Markets Authority as regulatory authority for Great Britain) is amended as follows.

- (2) For the heading substitute “Exercise of designated regulatory functions etc”.

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(7) 2000 c. 27. Relevant amendments were made by S.I. 2011/2704 and 2015/862.

- (3) Omit subsection (1).
- (4) In subsection (2)(a), for “functions as designated regulatory authority for Great Britain” substitute “designated regulatory functions”.
- (5) Omit subsection (3).
- 65.** Omit section 5ZA (report on activities as designated regulatory authority).
- 66.** In section 33 (standard conditions of electricity licences), in subsection (1), omit paragraph (za).
- 67.** In section 81 (standard conditions of gas licences), in subsection (2), omit “under section 2(2) of the European Communities Act 1972,”.
- 68.**—(1) Section 105 (general restrictions on disclosure of information) is amended as follows.
- (2) In subsection (4)—
- (a) in paragraph (ga) —
- (i) after “requirement” insert “or an EU REMIT requirement”;
- (ii) after “of REMIT” insert “or any proceedings brought under or by virtue of EU REMIT in a member State”;
- (b) in paragraph (h), for “an” substitute “a retained”.
- (3) In subsection (6A), for “another national regulatory authority” substitute “a national regulatory authority of a member State”.
- (4) In subsection (10)—
- (a) at the appropriate place insert—
- ““EU REMIT” means Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (OJ L 326, 8.12.2011, p.1–16), as it has effect in EU law as amended from time to time;”;
- (b) at the appropriate place insert—
- ““EU REMIT requirement” means a requirement imposed by any of Articles 3(1) and (5), 4(1), (2) and (3), 5, 8(1) and (5), 9(1), (4) and (5) and 15 of EU REMIT;”;
- (c) in the definition of “national regulatory authority”, after “in” insert “EU”.
- 69.**—(1) Section 105A (restrictions on disclosure in respect of cross-border exchanges of information) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (a), for “functions as designated regulatory authority for Great Britain” substitute “designated regulatory functions”;
- (b) in paragraph (b), for the words from “the designated” to “Gas Directive” substitute “the Northern Ireland Authority for Utility Regulation in the exercise of its designated regulatory functions”.
- (3) After subsection (1) insert—
- “(1A) This section also applies to any information provided to the Authority on or after exit day—
- (a) for the purpose of enabling it to carry out its designated regulatory functions; and
- (b) by an authority designated in accordance with Article 35 of the Electricity Directive or Article 39 of the Gas Directive.

(1B) This section also applies to any information provided to the Authority before exit day—

- (a) for the purpose of enabling it to carry out its functions as an authority designated in accordance with Article 35 of the Electricity Directive or Article 39 of the Gas Directive; and
- (b) by—
  - (i) the Northern Ireland Authority for Utility Regulation, or
  - (ii) an authority in another member State which is designated in accordance with Article 35 of the Electricity Directive or Article 39 of the Gas Directive, in accordance with Article 38(1) of the Electricity Directive or Article 42(1) of the Gas Directive.”.

(4) In subsection (2)(a), for “the originating authority”, in the first place it occurs, substitute “the authority that provided the information to the Authority (“the originating authority”)”.

(5) In subsection (3), for “Subsection (1)” substitute “Subsection (1), (1A) or (1B)”.

**70.** In section 106 (interpretation)—

- (a) omit the definition of “the Agency”;
- (b) omit the definition of “the Agency Regulation”;
- (c) omit the definition of “designated regulatory authority”;
- (d) omit the definition of “designated regulatory authority for Great Britain”;
- (e) at the appropriate place insert—

““designated regulatory function” means a function of the Authority or the Northern Ireland Authority for Utility Regulation conferred by—

- (a) a provision of retained EU law, as amended from time to time after exit day, or
- (b) a condition in—
  - (i) a licence under section 7, 7ZA or 7A of the Gas Act 1986 or Article 8 of the Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2)), or
  - (ii) a licence under section 6 or Article 10 of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)),

as that condition is modified from time to time on or after exit day,

where that function was, immediately before exit day, one of its functions as a regulatory authority designated in accordance with Article 35 of the Electricity Directive or Article 39 of the Gas Directive;.”.

**71.** In Schedule 1 (the Gas and Electricity Markets Authority), in paragraph 2A (certain duties of members of the Authority), for “functions as designated regulatory authority for Great Britain” substitute “designated regulatory functions”.

## **Energy Act 2004**

**72.** The Energy Act 2004(8) is amended as follows.

**73.** In section 137 (new standard conditions for transmission licences), in subsection (3), omit paragraph (za).

**74.** In section 146 (standard conditions for electricity interconnectors), in subsection (5), omit “under section 2(2) of the European Communities Act 1972,”.

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(8) 2004 c. 20. Relevant amendments were made by S.I. 2011/1043 and 2011/2704.

75. In section 150 (standard conditions for gas interconnectors), in subsection (5), omit “under section 2(2) of the European Communities Act 1972.”.

76. In Schedule 21 (energy transfer schemes), in paragraph 4 (provision that may be made by a scheme), in sub-paragraph (2)(f), omit “, EU instrument”.

### **Consumers, Estate Agents and Redress Act 2007**

77. In the Consumers, Estate Agents and Redress Act 2007(9), in section 19A (guidance for energy consumers), in subsection (2), after “Gas Directive” insert “which is in force immediately before exit day”.

## **PART 3**

### **Amendment of subordinate legislation: Great Britain**

#### **The Electricity Safety, Quality and Continuity Regulations 2002**

78. In the Electricity Safety, Quality and Continuity Regulations 2002(10), in regulation 1 (citation, commencement and interpretation)—

- (a) in paragraph (2), for “EEA State” substitute “country or territory”.
- (b) omit paragraph (3).

#### **The Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2010**

79. In the Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2010(11), in regulation 3 (interpretation), in paragraph (1), in the definition of “point of single contact”, for the words from “an” to the end substitute “the electronic assistance facility referred to in regulation 38 of the Provision of Services Regulations 2009(12);”.

#### **The Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2010**

80. In the Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2010(13), in regulation 3 (interpretation), in paragraph (1), in the definition of “point of single contact”, for the words from “an” to the end substitute “the electronic assistance facility referred to in regulation 38 of the Provision of Services Regulations 2009;”.

#### **The Electricity and Gas (Internal Markets) Regulations 2011**

81.—(1) In the Electricity and Gas (Internal Markets) Regulations 2011(14), regulation 51 (review of regulations) is amended as follows.

- (2) Omit paragraph (2).
- (3) In paragraph (6), omit—

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(9) 2007 c. 17. Section 19A was inserted by S.I. 2011/2704.

(10) S.I. 2002/2665.

(11) S.I. 2010/2154.

(12) S.I. 2009/2999.

(13) S.I. 2010/2155.

(14) S.I. 2011/2704. Regulation 51 was amended by S.I. 2014/3332, 2014/3333 and 2017/493.

- (a) the definition of “2010 Amending Decision”;
- (b) the definition of “the 2012 Amending Decision”;
- (c) the definition of “the 2013 Amending Regulation”;
- (d) the definition of “CACM Regulation”;
- (e) the definition of “ITC Regulation”;
- (f) the definition of “Third Package”.

### **The Energy Supply Company Administration Rules 2013**

**82.** In the Energy Supply Company Administration Rules 2013<sup>(15)</sup>, in rule 34 (venue and conduct of company meeting), in paragraph (5)(b), omit “other than the United Kingdom”.

### **The Electricity Capacity Regulations 2014**

**83.**—(1) In the Electricity Capacity Regulations 2014<sup>(16)</sup>, regulation 65 (protection of information) is amended as follows.

- (2) In paragraph (2)(b)(v), for “an” substitute “a retained”.
- (3) In paragraph (5), omit the definition of “EU obligation”.

## **PART 4**

### **Amendment of Northern Ireland legislation**

#### **The Electricity (Northern Ireland) Order 1992**

**84.** The Electricity (Northern Ireland) Order 1992<sup>(17)</sup> is amended as follows.

**85.** In Article 9 (exemptions from Article 8), in paragraph (3)(aa)—

- (a) for “the relevant requirements” substitute “relevant requirements”;
- (b) for “laid down by the Directive” substitute “contained in any provision of retained EU law”.

**86.** In Article 10C (application for certification) in paragraph (4)—

- (a) for “third country”, in both places, substitute “country outside the United Kingdom”;
- (b) omit “and the European Commission”.

**87.**—(1) Article 10D (report where applicant connected with a country outside the European Economic Area) is amended as follows.

- (2) In the heading, for “European Economic Area” substitute “United Kingdom”.
- (3) In paragraph (1), for “third country”, in both places, substitute “country outside the United Kingdom”.
- (4) In paragraph (2), omit “and the European Economic Area”.
- (5) In paragraph (3)(b), omit “third”.

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<sup>(15)</sup> S.I. 2013/1046.

<sup>(16)</sup> S.I. 2014/2043.

<sup>(17)</sup> S.I. 1992/231 (N.I. 1). Relevant amendments have been made by S.R. 2005 No. 335, 2011 No. 155, 2011 No. 247, 2012 No. 385, 2013 No. 394, 2014 No. 198 and 2015 No. 249.

**88.** Notwithstanding the amendments of Articles 10C and 10D made by regulations 86 and 87, where an application under Article 10C is made before exit day and the applicant is a person from an EEA state or a person controlled by a person from an EEA state—

- (a) the Northern Ireland Authority for Utility Regulation is not required to notify the Department for the Economy of the application under Article 10C(4), and
- (b) the Department for the Economy is not required to prepare a report under Article 10D in relation to the application.

**89.**—(1) Article 10E (certification) is amended as set out in paragraphs (2) to (6).

(2) In paragraph (1)—

- (a) omit “preliminary”;
- (b) for “it should” substitute “to”.

(3) In paragraph (3)—

- (a) omit “preliminary”;
- (b) after sub-paragraph (b) insert “and”;
- (c) omit sub-paragraph (d) and the “and” before it.

(4) In paragraph (4), for “(a), (b) or (d)” substitute “(a) or (b)”.

(5) Omit paragraphs (5) and (6).

(6) After paragraph (6) insert—

“(7) The Authority must publish its decision to certify or to refuse to certify the applicant, together with the reasons for it, in such manner as it considers appropriate.”.

(7) Where, immediately before exit day the Northern Ireland Authority for Utility Regulation has made a preliminary decision under Article 10E of the Electricity (Northern Ireland) Order 1992 on an application for certification, but not a final decision under Article 3 of Regulation (EC) No. 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network of cross-border exchanges in electricity and repealing Regulation (EC) No. 1228/2003, the Authority’s preliminary decision is to be treated on and after exit day as if it were a final decision made under Article 3 made immediately before exit day.

(8) If a preliminary decision of the Northern Ireland Authority for Utility Regulation is treated as a final decision to certify, or to refuse to certify, an applicant because of paragraph (7), the Authority must publish, in such manner as it considers appropriate, a document setting out that decision and the reasons for it.

**90.**—(1) Article 10F (grounds for certification) is amended as follows.

(2) For paragraph (1) substitute—

“(1) This Article applies to a decision under Article 10E as to whether to certify an applicant.”.

(3) In paragraph (2), for “decide that the applicant should be certified, or decide to certify the applicant,” substitute “decide to certify the applicant”.

(4) In paragraph (7), omit “preliminary”.

(5) For paragraph (8), substitute—

“(8) But regardless of whether a certification ground applies under paragraph (2), the Authority must not certify the applicant if a report prepared by the Department under Article 10D states that the certification of the applicant would put at risk the security of electricity supplies in the United Kingdom.”.

(6) At the end add—

“(9) For the purposes of paragraph (4), Article 9(9) of the Directive is to be treated as if the comparison with the provisions of Chapter 5 of the Directive were a comparison with the provisions of Chapter 5 as they applied in relation to a member State immediately before exit day.

(10) The references in paragraph (5) to paragraphs (1) and (2) of Article 13 of the Directive are to be treated as references to those provisions with the following modifications—

- (a) any reference to “Member State” (howsoever expressed) in paragraph (1) or (2) is to be read as if it were a reference to “the Authority”;
- (b) paragraph (1) of Article 13 is to be read as if “Such designation shall be subject to approval by the Commission” were omitted;
- (c) paragraph (2)(b) of Article 13 is to be read as if the reference to Article 12 of the Directive were a reference to Article 12 with the omission of point (h);
- (d) paragraph (2)(e) of Article 13 is to be read as if—
  - (i) the words “Regulation (EC) No. 714/2009” were a reference to the Electricity Regulation, and
  - (ii) the words from “including” to the end were omitted.”.

**91.**—(1) Article 10H (designation for the purposes of EU electricity legislation) is amended as set out in paragraphs (2) to (5).

(2) In the heading, for “EU electricity legislation” substitute “the Electricity Regulation”.

(3) In paragraph (2), for the words from “Article 10(2)” to the end substitute “the Electricity Regulation”.

(4) In paragraph (3), for “that Article” substitute “the Electricity Regulation”.

(5) In paragraph (4)—

- (a) at the end of sub-paragraph (b) insert “and”;
- (b) omit sub-paragraph (d) and the “and” before it.

(6) A person who is designated as an electricity transmission system operator under Article 10H of the Electricity (Northern Ireland) Order 1992 for the purposes of Article 10(2) of the Electricity Directive immediately before exit day is to be treated, on and after exit day, as a person who is designated as an electricity transmission system operator under Article 10H for the purposes of the Electricity Regulation, if and so long as the person designated or (as the case may be) the person who nominated the person designated continues on and after exit day to hold a licence under Article 10(1)(b) of the Electricity (Northern Ireland) Order 1992 in relation to which the duty under Article 10B(1) or (2) of that Order applies, and to be certified under Article 10E of that Order.

(7) In paragraph (6)—

“the Electricity Directive” means [Directive 2009/72/EC](#) of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing [Directive 2003/54/EC](#);

“the Electricity Regulation” means [Regulation \(EC\) No 714/2009](#) of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing [Regulation \(EC\) No 1228/2003](#).

**92.**—(1) Article 10I (monitoring and review of certification) is amended as follows.

(2) In paragraph (3)—



- (a) for “3rd March 2013” substitute “exit day”;
- (b) for “third country” substitute “country outside the United Kingdom”;
- (c) omit “and the European Commission”.
- (3) In paragraph (4), omit “final”.
- (4) Omit paragraphs (6) and (7).
- (5) In paragraph (8), omit “or (6)”.
- (6) In paragraph (12A), omit “or (7)”.

**93.**—(1) Article 10J (report as to connection of a certified person with a country outside the European Economic Area) is amended as follows.

- (2) In the heading, for “European Economic Area” substitute “United Kingdom”.
- (3) In paragraph (1), for “a third country” substitute “a country outside the United Kingdom”.
- (4) In paragraph (2), omit “and the European Economic Area”.
- (5) In paragraph (3)(b), omit “third”.

**94.**—(1) Article 10K (continuation or withdrawal of certification) is amended as set out in paragraphs (2) to (8).

- (2) In paragraph (1)—
  - (a) omit “preliminary”;
  - (b) omit “that either”;
  - (c) in sub-paragraph (a), for “the certification should be continued” substitute “to continue the certification”;
  - (d) for sub-paragraph (b) substitute—
    - “(b) to withdraw the certification;”.

(3) In paragraph (2), for “that the certification should be continued” substitute “to continue the certification”.

- (4) Omit paragraphs (3) to (5).
- (5) In paragraph (6)—
  - (a) omit “final”;
  - (b) after sub-paragraph (b) insert “and”;
  - (c) omit sub-paragraph (d) and the “and” before it.
- (6) In paragraphs (7) omit “final”.
- (7) After paragraph (8) insert—

“(8A) The Authority must publish its decision to continue a certification, or to withdraw a certification, together with the reasons for it, in such manner as it considers appropriate.”.

- (8) In paragraph (9)—
  - (a) for “Article 10F(8)(a) and (b)” substitute “Article 10F(8)”;
  - (b) for “Article 10F(8)(b)” substitute “Article 10F(8)”.

(9) Where, immediately before exit day, the Northern Ireland Authority for Utility Regulation has made a preliminary decision under Article 10K of the Electricity (Northern Ireland) Order 1992 on a review under Article 10I(2), (4) or (6) but not a final decision under Article 3 of Regulation (EC) No. 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network of cross-border exchanges in electricity and repealing Regulation (EC)

No. 1228/2003, the Authority’s preliminary decision is to be treated on and after exit day as if it were a final decision under Article 3 made immediately before exit day.

(10) If a preliminary decision of the Northern Ireland Authority for Utility Regulation is treated as a final decision to continue a certification, or to withdraw a certification, because of paragraph (9), the Authority must publish, in such manner as it considers appropriate, a document setting out that decision and the reasons for it.

**95.**—(1) Article 10L (interpretation) is amended as follows.

(2) In paragraph (1)—

- (a) in the definition of “person from a third country” for “third country” in both places, substitute “country outside the United Kingdom”;
- (b) in the definition of “review period”, omit “or (7)”;
- (c) omit the definition of “third country”.

(3) In paragraph (3), for “European Economic Area state” substitute “country outside the United Kingdom”.

(4) In paragraph (4)(a), for “European Economic Area state” substitute “country outside the United Kingdom”.

**96.** For Article 11A (compliance with Community obligations) substitute—

**“Licences: further conditions**

**11A.**—(1) The conditions included in a licence must—

- (a) require the licence holder to give to the Authority, in each year it is required by the Authority to do so, a report containing such information as the Authority may require in relation to—
  - (i) the present and likely future balance between supply and demand for electricity in Northern Ireland and Ireland;
  - (ii) additional generating capacity under construction or being planned for Northern Ireland and Ireland;
  - (iii) the quality and level of maintenance of the generating plant and equipment and of the transmission and distribution and supply systems in Northern Ireland and Ireland,
 and to give a copy of that report to the Department;
- (b) require the licence holder to keep accounts in accordance with requirements corresponding to those in Article 31 of the Directive and to have them audited in accordance with those requirements and must confer on the Department and the Authority a right of access to the holder’s accounts for the purpose of ensuring compliance with those requirements; and
- (c) ensure that all customers can purchase electricity from the supplier of their choice.

(2) For the purposes of paragraph (1)(b), the reference to Article 31 of the Directive is to be read as a reference to that Article with the modifications that—

- (a) in paragraph (2), in the first sub-paragraph, the words from “adopted pursuant” to the end were omitted; and
  - (b) in paragraph (3), the third sentence were omitted.
- (3) Transmission and distribution licence conditions must ensure that the holder—

- (a) does not disclose commercially sensitive information obtained in the course of carrying out its business, except in accordance with a legal duty to disclose information; and
  - (b) prevents information about its own activities which might be commercially advantageous from being disclosed in a discriminatory manner.
- (4) Transmission licence conditions must require the holder, as appropriate having regard to the activities authorised by the licence—
- (a) to carry out tasks corresponding to the tasks mentioned in Article 12 or 15(1) of the Directive;
  - (b) where the holder carries out tasks corresponding to those mentioned in Article 15(1) of the Directive, to do so in accordance with such criteria as may be determined and published by the Authority;
  - (c) in relation to any task corresponding to a task mentioned in Article 15(3) to (5) of the Directive, to follow such rules as may be specified in the conditions;
  - (d) to use transparent, non-discriminatory and market-based procedures in procuring the energy used in the carrying out of the holder’s functions;
  - (e) where the holder balances electricity inputs to and offtakes from any transmission system used under the licence, to adopt and follow rules which are objective, transparent and non-discriminatory; and
  - (f) to comply with requirements corresponding to the requirements for system access laid down by Article 32 of the Directive.
- (5) For the purposes of paragraph (4), the references to Articles 12, 15 and 32 of the Directive are to be read as references to those Articles with the modifications that—
- (a) Article 12 is to be read as if point (h) were omitted;
  - (b) Article 15 is to be read as if—
    - (i) references to “Member States” or to “regulatory authorities” (however expressed) were references to “the Authority”, except as provided in heads (iii) and (iv);
    - (ii) in paragraph (3), the reference to Article 16 of [Directive 2009/28/EC](#) were a reference to that Article with references in it to Member States being read as references to “the Authority”;
    - (iii) in paragraph (4), the reference to “the Member State concerned” were a reference to “Northern Ireland”;
    - (iv) in paragraph (5), for “where Member States have so provided or Member States” there were substituted a reference to “the Authority”;
  - (c) Article 32 is to be read as if—
    - (i) references to “Member States”, and to “the regulatory authorities”, were references to “the Authority”;
    - (ii) in paragraph (1), “in accordance with Article 37” were omitted; and
    - (iii) in paragraph (2), “in particular having regard to Article 3, and” were omitted.
- (6) Distribution licence conditions must require the holder—
- (a) to carry out tasks corresponding to the tasks mentioned in Articles 25(1) and (7) of the Directive;

- (b) not to discriminate between system users or classes of system users, and to provide system users with the information they need for efficient access to and use of the distribution system;
  - (c) when dispatching generating installations, to follow such rules as may be specified in the conditions for the purposes of giving priority to generating installations using renewable energy sources or waste or producing combined heat or power;
  - (d) to use transparent non-discriminatory and market-based procedures in procuring the energy used in the carrying out of the holder's functions;
  - (e) where the holder balances electricity inputs to and offtakes from any distribution system used under the licence, to adopt and follow rules which are objective, transparent and non-discriminatory;
  - (f) to comply with requirements corresponding to the requirements for system access mentioned in Article 32 of the Directive;
  - (g) to facilitate (to the extent within the holder's control) the ability of customers to have access to consumption data.
- (7) For the purposes of paragraph (6)(f), the reference to Article 32 of the Directive is to be read as a reference to that Article with the modifications set out in paragraph (5)(c).
- (8) Transmission licence conditions must—
- (a) where the holder, or a holder of a transmission licence in relation to whom the holder is a related transmission licensee (within the meaning given by Article 10L(1)), is certified under the first certification ground in Article 10F, require that the ownership unbundling requirement in Article 10G continues to be met in relation to the holder;
  - (b) where the holder, or a holder of a transmission licence in relation to whom the holder is a related transmission licensee, is certified under the second certification ground in Article 10F, require the maintenance in force of arrangements by virtue of which the requirements mentioned in Article 9(9) of the Directive were met;
  - (c) where the holder is certified under the third certification ground in Article 10F or is designated as an independent system operator for the purposes of that certification ground—
    - (i) require that requirements corresponding to the requirements mentioned in Articles 13(2) and 14(1) and (2) of the Directive which are relevant to the holder continue to be met; and
    - (ii) require that requirements corresponding to the requirements mentioned in Article 13(4) or 13(5) of the Directive which are relevant to the holder continue to be 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.
- (9) For the purposes of paragraph (8)(b), the reference to Article 9(9) of the Directive is to be treated as set out in Article 10F(9) of this Order.
- (10) For the purposes of paragraph (8)(c), the references to Articles 13(2), (4) and (5) and 14(2) of the Directive are to be read as references to those provisions with the following modifications—
- (a) Article 13(2) is to be read as if it contained the modifications in Article 10F(10) of this Order;
  - (b) Article 13(4) is to be read as if—

- (i) in the first sentence, “and” were inserted after “access charges”, and the words from “and payments” to “Regulation (EC) No. 714/2009” were omitted; and
  - (ii) in the third sentence “in accordance with this Chapter” were omitted;
- (c) Articles 13(5) and 14(2) are to be read as if references to “the regulatory authority” were references to “the Authority”.
- (11) Subject to paragraph (8), distribution licence conditions must, in the case of a distribution licence granted to a person forming part of a vertically integrated undertaking—
  - (a) require that person to be independent in terms of its legal form, organisation and decision making from other activities not relating to distribution;
  - (b) require that person to meet criteria corresponding to the criteria set out in points (a) to (d) of Article 26(2) of the Directive; and
  - (c) require that person not to take advantage of its vertical integration to distort competition and, in particular, in its communication and branding, not to create confusion in respect of the separate identity of any supply branch of the vertically integrated undertaking;
- (12) For the purposes of paragraph (11)(b), Article 26(2) of the Directive is to be read as if—
  - (a) in point (c), instead of “in accordance with Article 37(6), it read “by the Authority”;
  - (b) in point (d), instead of to “the regulatory authority referred to in Article 35(1)”, it read “to the Authority”.
- (13) Transmission licence conditions must, in particular, in the case of a transmission licence granted to a person forming part of a vertically integrated undertaking who carries on the combined activity of transmission and distribution system operator to which Article 29 of the Directive applies, as appropriate having regard to the activities authorised by the licence, require that person to comply with requirements corresponding to the requirements mentioned in that provision in relation to those activities.
- (14) Paragraph (11)(a) does not prevent a person from acting as both a transmission system operator and a distribution system operator.
- (15) Transmission, distribution and supply licence conditions must require that any supply of electricity by the licence holder to a household customer, or (as the case may be) any transmission or distribution by a licence holder in connection with such a supply, meets specified quality standards.
- (16) Supply licence conditions must—
  - (a) require that any supply of electricity by a licence holder to a household customer is given at reasonable, easily and clearly comparable, transparent and non-discriminatory prices;
  - (b) require the introduction and maintenance of safeguards to help any consumers referred to in Article 12(3) of the Energy (Northern Ireland) Order 2003 in particular to avoid disconnection from an electricity supply;
  - (c) ensure that consumers of electricity have access to information corresponding to that mentioned in Article 3(9) of the Directive;
  - (d) ensure that household customers are not charged for changing supplier and are able to use transparent, simple and inexpensive complaints procedures;

- (e) require that information provided to consumers of electricity (including information about the contractual terms and conditions offered to such consumers and dispute settlement mechanisms) by the holder of such a licence is transparent and accurate;
- (f) make provision for customers wishing to change suppliers to be able to do so within 3 weeks;
- (g) ensure that customers have consumption data at their disposal and are able to give access to that data to other suppliers free of charge;
- (h) ensure that customers have access to information about sources of energy efficiency advice;
- (i) require that the holder of a 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;
- (j) ensure that household customers are offered a wide choice of payment methods, which do not unduly discriminate between customers;
- (k) ensure that the terms and conditions of supply contracts offered by the licence holder to household customers contain information corresponding to the information mentioned in point (a), and meet criteria corresponding to the criteria set out in points (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;
- (m) ensure that household customers receive a final bill following changing suppliers no later than 6 weeks after the change of supplier has taken place; and
- (n) ensure that the holder of the licence retains for at least 5 years data corresponding to the data mentioned in Article 40(1) and (2) of the Directive.

(17) For the purposes of paragraph (16)(c), the reference to Article 3(9) of the Directive is to be read as a reference to that provision with the modification that, in the second subparagraph, the reference to an undertaking situated outside the Community is to be read as if it were a reference to an undertaking situated outside Northern Ireland.

(18) For the purposes of paragraphs (15) and (16), “household customer” means a customer who purchases electricity for consumption by the customer’s own household.”.

**97.** In Article 11AB (conditions on transmission and distribution licences relating to priority dispatch) in paragraph (1) omit the words from “Article 16(2)(c)” to “in particular,”.

**98.** For Article 11AC (licensing and energy efficiency) substitute—

**“Licensing and energy efficiency**

**11AC.**—(1) Subject to paragraph (7), where a customer of the holder of a licence granted under Article 10(1)(c) takes a supply of electricity through a smart meter, the conditions included in that licence must require the holder of the licence to ensure that—

- (a) the meter complies with standards corresponding to those set out in Article 9(2)(a) and 10(2) of the Energy Efficiency Directive and where the customer so requests, Article 9(2)(c) of that Directive;
- (b) the customer is provided with the information specified in Article 9(2)(a) and 10(2) of the Energy Efficiency Directive;
- (c) the customer is provided with the information specified in Article 10(2)(b) of the Energy Efficiency Directive in the manner mentioned in that provision;

- (d) where the customer so requests, the customer or another person acting on the customer's behalf is provided with the information specified in Article 9(2)(d) of the Energy Efficiency Directive in the manner mentioned in that provision;
  - (e) the meter is physically secure and any information provided by it is held in a manner that complies with the requirements of any relevant legislation relating to data protection; and
  - (f) advice and information specified in Article 9(2)(e) of the Energy Efficiency Directive is provided to the customer.
- (2) For the purposes of paragraph (1)(b) and (c), the reference to Article 10(2) of the Energy Efficiency Directive is to be read as a reference to that Article with the modifications that—
- (a) the words “installed in accordance with Directives [2009/72/EC](#) and [2009/73/EC](#)” are to be omitted; and
  - (b) the reference to “Member States” is to be read as a reference to “the Authority”.
- (3) Where a customer of the holder of a licence under Article 10(1)(c) does not take a supply of electricity through a smart meter, the conditions included in that licence must require the holder of the licence to ensure that any bill or statement of account provided to the customer is accurate and based on actual consumption and that the information specified in paragraph 1.1 of Annex VII to the Energy Efficiency Directive is provided to the customer in the manner specified in that provision.
- (4) The conditions included in a licence under Article 10(1)(c) must require the holder of the licence to ensure that—
- (a) where a customer so requests, the information specified in Article 10(3)(a) of the Energy Efficiency Directive is provided to an energy service provider designated by the customer;
  - (b) any bill or statement of account sent to the customer—
    - (i) contains the information specified in Article 10(3)(c) of and paragraph 1.2 and 1.3 of Annex VII to the Energy Efficiency Directive;
    - (ii) complies with any guidance issued and published by the Authority; and
    - (iii) where the customer so requests, is provided in an electronic format;
  - (c) where a customer so requests, the information specified in Article 10(3)(b) of the Energy Efficiency Directive is provided to the customer;
  - (d) any customer taking a supply of electricity from the licence holder is provided with the information specified in paragraph 1.3 of Annex VII to the Energy Efficiency Directive in contract documentation;
  - (e) any information provided to a customer in accordance with conditions included under this paragraph is provided in a timely manner and in an easily understandable format enabling customers to compare deals on a like-for-like basis;
  - (f) a charge is not made in respect of any bill or statement of account sent to a customer or in respect of any information provided to the customer (whether in the bill or statement of account or otherwise).
- (5) The conditions included in a licence under Article 10(1)(b) must ensure that—
- (a) criteria corresponding to those specified in Annex XI to the Energy Efficiency Directive in relation to network regulation and network tariffs are satisfied;

- (b) in relation to electricity from high efficiency co-generation, the licence holder complies with requirements corresponding to those set out in Annex XII of the Energy Efficiency Directive;
  - (c) where the licence holder is required to be responsible for conducting balancing services and other operational services—
    - (i) such services are part of a service bidding process which is transparent, non-discriminatory and open to scrutiny; and
    - (ii) in meeting the requirements for such services and ancillary services, the licence holder treats the persons mentioned in Article 15(8), second indent of the Energy Efficiency Directive in a non-discriminatory manner on the basis of their technical capabilities;
  - (d) the licence holder carries out tasks corresponding to the tasks specified for transmission system operators by Article 15(8), third indent of the Energy Efficiency Directive.
- (6) The conditions included in a licence under Article 10(1)(bb) must ensure that—
- (a) any customer taking a supply of electricity distributed by the licence holder is provided with the information mentioned in paragraph 1.3 of Annex VII to the Energy Efficiency Directive in contract documentation;
  - (b) network regulation and network tariffs comply with criteria corresponding to those set out in Annex XI to the Energy Efficiency Directive;
  - (c) the licence holder complies with requirements corresponding to those set out in Annex XII to the Energy Efficiency Directive in relation to electricity from high efficiency co-generation;
  - (d) where the licence holder is required to be responsible for conducting balancing services and other operational services—
    - (i) such services are part of a service bidding process which is transparent, non-discriminatory and open to scrutiny; and
    - (ii) in meeting the requirements for such services and ancillary services, the licence holder treats the persons mentioned in Article 15(8), second indent of the Energy Efficiency Directive in a non-discriminatory manner on the basis of their technical capabilities;
  - (e) the licence holder carries out tasks corresponding to the tasks specified for distribution system operators by Article 15(8), third indent of the Energy Efficiency Directive.
- (7) The duty on the Authority in paragraph (1) to include conditions in a licence only has 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.
- (8) In this Article—
- (a) “the Energy Efficiency Directive” means the European Parliament and Council [Directive 2012/27/EU](#) on energy efficiency, amending Directives [2009/125/EC](#) and [2010/30/EU](#) and repealing Directives [2004/8/EC](#) and [2006/32/EC](#)(**18**);
  - (b) “smart meter” means—



- (i) an electricity meter which can send and receive information using an electronic communications network; or
- (ii) an electricity 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 communications network;
- (c) “electronic communications network” has the same meaning as in section 32 of the Communications Act 2003<sup>(19)</sup>; and
- (d) other expressions which are also used in the Energy Efficiency Directive have the same meaning as in that Directive.”.

**99.**—(1) Article 11B (provision of additional capacity or energy efficiency measures) is amended as follows.

- (2) In paragraph (1) for “Article 11A(2)(a)” substitute “Article 11A(1)”.
- (3) In paragraph (5)—
  - (a) for “such procedures as may be” substitute “transparent and non-discriminatory procedures”;
  - (b) for “requirements of Article 8” substitute “requirements specified in Article 8”;
  - (c) for “that Article” substitute “those requirements”.
- (4) After paragraph (5) add—
  - “(6) The Department must publish details of any tendering process for the purposes of this Article at least 6 months prior to the date for submission of tenders.
  - (7) For the purposes of this Article, Article 8 of the Directive is to be read as if—
    - (a) any reference to Member States were a reference to the Department;
    - (b) in paragraph (3)—
      - (i) the first sub-paragraph were omitted;
      - (ii) after the word “available” there were inserted “in such manner as the Department considers appropriate”;
      - (iii) the words “established in the territory of a Member State” were omitted;
    - (c) in paragraph (5), for the words “a regulatory authority referred to in Article 35(1)” there were substituted “the Authority”.”.

**100.**—(1) Article 31A (dispute resolution) is amended as follows.

- (2) In paragraph (1)(b), for the words from “imposed” to “Directive” substitute “which satisfies the requirement in paragraph (1A)”.
- (3) After paragraph (1) insert—
  - “(1A) The requirement in this paragraph is that either—
    - (a) the obligation is an obligation imposed on the holder before exit day pursuant to the Directive, including such an obligation as modified on or after exit day, or
    - (b) both the following apply—
      - (i) the obligation was imposed on the holder on or after exit day, and
      - (ii) the obligation is such that, if it had been imposed immediately before exit day, it would have been an obligation imposed pursuant to the Directive;

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<sup>(19)</sup> 2003 c.21. Section 32 has been amended by S.I. 2011/1210.

and in this paragraph “the holder” means the holder mentioned in paragraph (1)(a).”.

**101.**—(1) Article 39 (consent required for construction, etc., of generating stations) is amended as follows.

(2) In paragraph (9), for the words from “the criteria” to the end substitute “criteria determined by the Department from time to time and published by it which take into account matters corresponding to the matters mentioned in points (a) to (i) and (k) in Article 7(2) of the Directive”.

**102.** In Article 40 (consent required for overhead lines), in paragraph (6), for the words “the criteria” to the end substitute “objective and non-discriminatory criteria determined by the Department from time to time and published by it”.

**103.** In Article 50 (general functions of Authority), after paragraph (3B) insert—

“(3C) The references in paragraph (3B) to the following provisions of the Directive are to be treated as references to those provisions with the following modifications—

- (a) Article 26(3) is to be read—
  - (i) as if the reference to “Member States” were a reference to “the Department”;
  - (ii) as if the reference to “regulatory authorities” were a reference to “the Authority”;
- (b) Article 37(1) is to be read as if sub-paragraph (g) were omitted;
- (c) Article 37(1)(q) is to be read as if for “Regulation (EC) No. 714/2009” there were substituted “the Electricity Regulation”;
- (d) Article 37(1)(s) is to be read as if—
  - (i) the words “Community and third country” were omitted, and
  - (ii) after “operators” there were inserted “in the United Kingdom and transmission system operators in countries outside the United Kingdom”;
- (e) Article 37(1)(t) is to be read as if the reference to Article 42 were to Article 42 with the omission of the words “must cause” to “internal market and”;
- (f) Article 37(3)(f) is to be read as if for “Regulation (EC) No. 714/2009” there were substituted “the Electricity Regulation”.”.

### **The Gas (Northern Ireland) Order 1996**

**104.** The Gas (Northern Ireland) Order 1996(20) is amended as follows.

**105.** In Article 7 (exemptions from Article 6) in paragraph (4A), for “the relevant requirements and prohibitions laid down by the Directive” substitute “relevant requirements and prohibitions contained in any provision of retained EU law”.

**106.** In Article 8 (licences authorising supply etc.) for paragraph (7B) substitute—

“(7B) In paragraph (4A) “published criteria” means criteria determined by the Department and published by it from time to time which are objective and non-discriminatory.”.

**107.** In Article 8C (application for certification) for paragraph (2) substitute—

“(2) If the application is made on or after 3rd March 2013 and the applicant is a person from a country outside the United Kingdom or a person controlled by a person from a

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(20) S.I. 1996/275 (N.I. 2). Relevant amendments have been made by S.R. 2006 No. 358, 2011 No. 155, 2013 No. 92, 2014 No. 198 and 2015 No. 249.

country outside the United Kingdom, the Authority must notify the Department as soon as is reasonably practicable.”.

**108.**—(1) Article 8D (report where applicant connected with a country outside the European Economic Area) is amended as follows.

(2) In the heading, for “European Economic Area” substitute “United Kingdom”.

(3) In paragraph (1), for “third country”, in both places, substitute “country outside the United Kingdom”.

(4) In paragraph (2), omit “and the European Economic Area”.

(5) In paragraph (3)(b), omit “third”.

**109.** Notwithstanding the amendments of Articles 8C and 8D of the Gas (Northern Ireland) Order 1996 made by regulations 107 and 108, where an application under Article 8C is made before exit day and the applicant is a person from an EEA state or a person controlled by a person from an EEA state—

(a) the Northern Ireland Authority for Utility Regulation is not required to notify the Department for the Economy of the application under Article 8C(2), and

(b) the Department for the Economy is not required to prepare a report under Article 8D in relation to the application.

**110.**—(1) Article 8E (certification) is amended as set out in paragraphs (2) to (6).

(2) In paragraph (1)—

(a) omit “preliminary”;

(b) for “it should” substitute “to”.

(3) In paragraph (3)—

(a) omit “preliminary”;

(b) after sub-paragraph (b) insert “and”;

(c) omit sub-paragraph (d) and the “and” before it.

(4) In paragraph (4), for “(a), (b) or (d)” substitute “(a) or (b)”.

(5) Omit paragraphs (5) and (6).

(6) After paragraph (6) insert—

“(7) The Authority must publish its decision to certify or refuse to certify the applicant, together with the reasons for it, in such manner as it considers appropriate.”.

(7) Where, immediately before exit day, the Northern Ireland Authority for Utility Regulation has made a preliminary decision under Article 8E of the Gas (Northern Ireland) Order 1996 on an application for certification, but not a final decision under Article 3 of Regulation (EC) No. 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions of access to the natural gas transmission networks and repealing Regulation (EC) No. 1775/2005, the Authority’s preliminary decision is to be treated on and after exit day as if it were a final decision under Article 3 made immediately before exit day.

(8) If a preliminary decision of the Northern Ireland Authority for Utility Regulation is treated as a final decision to certify, or to refuse to certify, an applicant because of paragraph (7), the Authority must publish, in such manner as it considers appropriate, a document setting out that decision and the reasons for it.

**111.**—(1) Article 8F (grounds for certification) is amended as follows.

(2) For paragraph (1) substitute—

“(1) This Article applies to a decision under Article 8E as to whether to certify an applicant.”.

(3) In paragraph (2)—

- (a) for “decide that the applicant should be certified, or decide to certify the applicant,” substitute “decide to certify the applicant”;
- (b) omit “four”.

(4) Omit paragraph (5).

(5) In paragraph (6), omit the words from “in accordance” to the end.

(6) In paragraph (7), omit “preliminary”.

(7) For paragraph (8) substitute—

“(8) But, regardless of whether a certification ground applies under paragraph (2), the Authority must not certify the applicant 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.”.

(8) At the end add—

“(9) The references in paragraph (4) to Article 14(1) and (2) and 15(1) of the Directive are to be treated as references to those provisions with the following modifications—

- (a) any reference to “Member State” (howsoever expressed) in paragraphs (1) and (2) of Article 14 is to be read as if it were a reference to “the Authority”;
- (b) paragraph (1) of Article 14 is to be read as if the reference to “Such designation shall be subject to approval by the Commission” were omitted;
- (c) paragraph (2)(b) of Article 14 is to be read as if after “Article 13” there were inserted “as implemented in relation to Northern Ireland immediately before exit day, disregarding for this purpose—
  - (i) paragraph 2,
  - (ii) paragraph 3 so far as relating to Article 41(6)(c), and
  - (iii) paragraph 4 except as it relates to such minimum standards, if any, as apply in Northern Ireland”;
- (d) paragraph (2)(e) of Article 14 is to be read as if—
  - (i) the words “Regulation (EC) No. 715/2009” were a reference to the Gas Regulation, and
  - (ii) the words from “including” to the end were omitted;
- (e) paragraph (1) of Article 15 is to be read as if, in the second sentence, “pursuant to Article 33” were omitted.”.

**112.**—(1) Article 8H (designation for the purposes of EU gas legislation) is amended as set out in paragraphs (2) to (5).

(2) In the heading, for “EU gas legislation” substitute “the Gas Regulation”.

(3) In paragraph (2)—

- (a) omit “or third”;
- (b) for the words from “Article 10(2)” to the end substitute “the Gas Regulation”.

(4) In paragraph (3), for “that Article” substitute “the Gas Regulation”.

(5) In paragraph (4)—

- (a) at the end of sub-paragraph (b) insert “and”;

(b) omit sub-paragraph (d) and the “and” before it.

(6) A person who is designated as a gas transmission system operator under Article 8H of the Gas (Northern Ireland) Order 1996 for the purposes of Article 10(2) of the Gas Directive immediately before exit day is to be treated, on and after exit day, as a person who is designated as a gas transmission system operator under Article 8H for the purposes of the Gas Regulation, if and for so long as the person designated or (as the case may be) the person who nominated the person designated continues on and after exit day to hold a licence under Article 8(1)(a) of the Gas (Northern Ireland) Order 1996 and to be certified under Article 8E of that Order.

(7) In paragraph (6)—

“the Gas Directive” means [Directive 2009/73/EC](#) of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing [Directive 2003/55/EC](#);

“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](#).

**113.**—(1) Article 8I (monitoring and review of certification) is amended as follows.

(2) In paragraph (3)—

(a) for “3rd March 2013” substitute “exit day”;

(b) for “third country” substitute “country outside the United Kingdom”;

(c) omit “and the European Commission”.

(3) In paragraph (4), omit “final”.

(4) Omit paragraphs (6) and (7).

(5) In paragraph (8), omit “or (6)”.

(6) In paragraph (12A), for “paragraphs (5) or (7)” substitute “paragraph (5)”.

**114.**—(1) Article 8J (report as to any connection of a certified person with a country outside the European Economic Area) is amended as follows.

(2) In the heading, for “European Economic Area” substitute “United Kingdom”.

(3) In paragraph (1), for “a third country” substitute “a country outside the United Kingdom”.

(4) In paragraph (2), omit “and the European Economic Area”.

(5) In paragraph (3)(b), omit “third”.

**115.**—(1) Article 8K (continuation or withdrawal of certification) is amended as set out in paragraphs (2) to (8).

(2) In paragraph (1)—

(a) omit “preliminary”;

(b) omit “that either”;

(c) in sub-paragraph (a), for “the certification should be continued” substitute “to continue the certification”;

(d) for sub-paragraph (b) substitute—

“(b) to withdraw the certification;”.

(3) In paragraph (2), for “that the certification should be continued” substitute “to continue the certification”.

(4) Omit paragraphs (3), (4) and (5).

(5) In paragraph (6)—

- (a) omit “final”;
- (b) after sub-paragraph (b) insert “and”;
- (c) omit sub-paragraph (d) and the “and” before it.

(6) In paragraph (7), omit “final”.

(7) After paragraph (8) insert—

“(8A) The Authority must publish its decision to continue a certification, or to withdraw a certification, together with the reasons for it, in such manner as it considers appropriate.”.

(8) In paragraph (9)—

- (a) for “Article 8F(8)(a) and (b)” substitute “Article 8F(8)”;
- (b) for “Article 8F(8)(b)” substitute “Article 8F(8)”.

(9) Where immediately before exit day, the Northern Ireland Authority for Utility Regulation has made a preliminary decision under Article 8K of the Gas (Northern Ireland) Order 1996 on a review under Article 8I(2), (4) or (6) but not a final decision under Article 3 of 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, the Authority’s preliminary decision is to be treated on and after exit day as if it were a final decision under Article 3 made immediately before exit day.

(10) If a preliminary decision of the Northern Ireland Authority for Utility Regulation is treated as a final decision to continue a certification, or to withdraw a certification, because of paragraph (9), the Authority must publish, in such manner as it considers appropriate, a document setting out that decision and the reasons for it.

**116.—**(1) Article 8L (interpretation) is amended as follows.

(2) In paragraph (1)—

- (a) in the definition of “person from a third country”, for “third country”, in both places, substitute “country outside the United Kingdom”;
- (b) in the definition of “review period”, omit “or (7)”;
- (c) omit the definition of “third country”.

(3) In paragraph (3), for “European Economic Area state” substitute “country outside the United Kingdom”.

(4) In paragraph (4), for “European Economic Area state” substitute “country outside the United Kingdom”.

**117.** For Article 9A (limitation of rights under exclusive licences) substitute—

“**9A.** The prohibition in Article 9(3) does 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 where the gas is supplied and conveyed through a direct line.”.

**118.** For Article 10A (compliance with community obligations) substitute—

**“Licences: further conditions**

**10A.—**(1) The conditions included in a licence must—

- (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 technical safety criteria and rules which are objective and non-discriminatory;
  - (c) require the licence holder to keep accounts in accordance with requirements corresponding to the requirements in Article 31 of the Directive and to have them audited in accordance with those requirements and must 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.
- (2) For the purposes of paragraph (1)(c), the reference to Article 31 of the Directive is to be read as a reference to that Article with the modifications that—
- (a) in paragraph (2), in the first sub-paragraph, the words from “adopted pursuant” to the end are omitted; and
  - (b) in paragraph (3), the third sentence is omitted.
- (3) Conditions included in a licence under Article 8(1)(a) must, having regard to the activities authorised by the licence, require the holder—
- (a) where the holder balances gas inputs to and offtakes from any pipeline used under the licence, to adopt, follow, and make publicly available, rules which are objective, transparent and non-discriminatory;
  - (b) to procure energy used for carrying out the holder's functions in accordance with procedures which are transparent, non-discriminatory and market based;
  - (c) where appropriate in relation to the holder's circumstances, to carry out tasks corresponding to the tasks mentioned in Article 25(1) of the Directive;
  - (d) to refrain from discriminating between persons or classes of person using or intending to use any pipe-line, facility or associated apparatus operated for the purposes of the licence;
  - (e) to provide such persons with the information they need for efficient access to and use of the system;
  - (f) to provide any other licence holder mentioned in Article 25(3) of the Directive with sufficient information to achieve an outcome that corresponds to the outcome mentioned in that provision;
  - (g) to comply with requirements for system access corresponding to the requirements mentioned in Article 32 of the Directive (as read with Article 2 of the Commission Decision);
  - (h) to take any measures necessary for the purpose of ensuring that information necessary for effective competition and for the effective functioning of the market is made public;
  - (i) to facilitate (to the extent within the holder's control) the ability of customers to change suppliers within 3 weeks;
  - (j) to facilitate (to the extent within the holder's control) the ability of customers to have access to consumption data.
- (4) For the purposes of paragraph (3)(g), the reference to Article 32 of the Directive is to be read as a reference to that Article with the modifications that—
- (a) for references to “Member States” there were substituted references to “the Department”;

- (b) in paragraph (1), for the words “in accordance with Article 41 by a regulatory authority referred to in Article 39(1)” there were substituted “by the Authority”;
  - (c) in paragraph (3), for the reference to “Community competition rules” there were substituted a reference to “retained EU law relating to competition”.
- (5) Conditions included in a licence under Article 8(1)(a) must—
- (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 of 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 (within the meaning given in Article 7D) 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 comply with requirements which correspond to those mentioned in points (a) and (d) of paragraph 1 of Annex I to the Directive; and
    - (ii) requirements corresponding to those mentioned in points (b), (c) and (g) of paragraph 1 of Annex I to the Directive are complied with in relation to the customer.
- (6) For the purposes of paragraph (5)(b)(ii), point (g) of paragraph 1 of Annex I to the Directive is to be read as if for the words “the national legislation applicable” there were substituted “the Gas (Northern Ireland) Order 1996”.
- (7) The conditions included in a licence under Article 8(1)(a) granted to a person forming part of a vertically integrated undertaking must—
- (a) require that person to continue to be independent in terms of that person’s legal form, organisation and decision-making in relation to that person’s activities under the licence and to comply with requirements corresponding to those mentioned in Article 26(2) of the Directive for independence in terms of organisation and decision making, in particular the minimum criteria laid down thereby and to comply with requirements corresponding to the requirements in relation to communication and branding mentioned in Article 26(3) of the Directive; and
  - (b) if the person carries on combined activity as the holder of a licence under Article 8(1)(a), (b), (c) and (d), require that person to comply with requirements corresponding to those mentioned in Article 29 of the Directive for independence in terms of legal form, organisation and decision making in relation to activities under the licence.
- (8) Paragraph (7)(a) does not prevent a person from acting as the holder of a licence of more than one type under Article 8(1).
- (9) For the purposes of paragraph (7)—
- (a) Article 26(2) of the Directive is to be read as if—



- (i) in point (c), for the words “in accordance with Article 41(6)”, there is substituted “by the Authority”;
    - (ii) in point (d), for the words “to the regulatory authority referred to in Article 39(1)”, there is substituted “to the Authority”;
  - (b) Article 26(3) of the Directive is to be read as if for the words from “the Member States” to “or other competent bodies” there were substituted “the Authority must monitor all the activities of the distribution system operator”.
- (10) Paragraph (7)(a) does not apply in the case of a licence holder who does not supply gas to persons or premises, but who conveys gas from one place to another through one or more pipeline systems to which there are fewer than 100,000 premises connected.
- (11) The conditions included in a licence under Article 8(1)(a) must—
- (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 the ownership unbundling requirement in Article 8G to continue 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 requirements corresponding to those mentioned 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 requirements corresponding to those mentioned in Article 14(4) or 14(5) of the Directive which are relevant to the holder continue to be met; and
  - (c) 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.
- (12) For the purposes of paragraph (11)—
- (a) the references to Article 14 are to be read as references to that provision as if it contained the modifications in Article 8F(9) of this Order;
  - (b) Article 14(4) is to be read as if the words “in accordance with this Chapter” were omitted;
  - (c) Article 14(5) and 15(2) are to be read as if references to “the regulatory authority” were references to “the Authority”;
  - (d) paragraph (1) of Article 15 is to be read as if, in the second sentence, “pursuant to Article 33” were omitted;
  - (e) item (c) in Article 15(2) is to be read as if for the words “in accordance with Article 41(6)”, there were substituted “by the Authority”.
- (13) The conditions included in a licence under Article 8(1)(a), as appropriate having regard to the activities authorised by the licence, must require the holder to carry out tasks corresponding to those mentioned in Article 13(1) of the Directive.
- (14) The conditions included in a licence under Article 8(1)(b) must require the holder, as appropriate, having regard to the activities authorised by the licence—
- (a) to carry out tasks corresponding to the tasks mentioned in Article 13(1) of the Directive;

- (b) to comply with requirements corresponding to the requirements for access to storage mentioned in Article 33 of the Directive in accordance with criteria published by the Authority; and
  - (c) where the person forms part of a vertically integrated undertaking, to comply with requirements corresponding to those mentioned in Article 15 of the Directive concerning independence in terms of legal form, organisation and decision-making in relation to its activities under the licence and, in particular, to comply with minimum criteria corresponding to those mentioned in Article 15(2) of the Directive.
- (15) For the purposes of paragraph (14)—
- (a) the reference to Article 15 of the Directive is to be read as a reference to that Article with the modifications set out in paragraph (12)(c), (d) and (e);
  - (b) Article 33 is to be read as if—
    - (i) any reference to “Member States”, and to “the regulatory authorities” in Article 33 were a reference to “the Department”;
    - (ii) in paragraph (1), the third sub-paragraph were omitted;
    - (iii) in paragraph (3), in the second sub-paragraph the words from “by 1 January 2005” were a reference to “on an annual basis”.
- (16) The conditions included in a licence under Article 8(1)(c) must—
- (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 information (including information about the contractual terms and conditions offered to such consumers);
  - (c) ensure that all customers can exercise their freedom to purchase gas from the supplier of their choice;
  - (d) ensure that persons exercising that freedom are not charged therefor and are able to use transparent, simple and inexpensive complaints procedures;
  - (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 the 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;
  - (g) ensure that customers have consumption data at their disposal and are able to give access to that data to other suppliers;
  - (h) ensure that customers have access to information about sources of energy efficiency advice;
  - (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;
  - (j) ensure that household customers are offered a wide choice of payment methods which do not unduly discriminate between customers;

- (k) ensure that the terms and conditions of supply contracts offered by the licence holder to household customers comply with requirements corresponding to those mentioned in points (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;
  - (m) ensure that household customers receive a final bill following changing suppliers no later than six weeks from the date on which the change occurs; and
  - (n) ensure that the holder of the licence for at least five years maintains records of data corresponding to that required by Article 44 of the Directive.
- (17) Conditions included in a licence under Article 8(1)(d) must require the holder as appropriate having regard to the activities authorised by the licence—
- (a) to carry out tasks corresponding to the tasks mentioned in Article 13(1) of the Directive;
  - (b) to keep accounts in terms corresponding to the requirements of Article 31 of the Directive and to have them audited in a manner corresponding to those requirements; and
  - (c) to comply with requirements for system access corresponding to those mentioned in Article 32 of the Directive (as read with Article 2 of the Commission Decision).
- (18) Conditions included in a licence under Article 8(1)(d) must confer on the Department or the Authority a right of access to the licence holder’s accounts for the purposes of ensuring compliance with the requirements mentioned in paragraph (17).
- (19) For the purposes of paragraph (17)—
- (a) the reference to Article 31 of the Directive is to be read as a reference to that Article with the modifications set out in paragraph (2);
  - (b) the reference to Article 32 of the Directive is to be read as a reference to that Article with the modifications set out in paragraph (4).
- (20) Conditions included in a licence under Article 8(1) must ensure that the holder—
- (a) does not disclose commercially sensitive information obtained in the course of carrying out its business, except in accordance with a legal duty to disclose information; and
  - (b) prevents information about its own activities which might be commercially advantageous from being disclosed in a discriminatory manner.”.

**119.** For Article 10AA (licensing and energy efficiency) substitute—

**“Licensing and energy efficiency**

**10AA.**—(1) Subject to paragraph (5), where a customer of the holder of a licence granted under Article 8(1)(c) takes a supply of gas through a smart meter, the conditions included in that licence must require the holder of the licence to ensure that—

- (a) the meter complies with standards corresponding to those set out in Article 9(2)(a) and 10(2) of the Energy Efficiency Directive and where the customer so requests, Article 9(2)(c) of that Directive;
- (b) the customer is provided with the information specified in Article 9(2)(a) and 10(2) of the Energy Efficiency Directive;
- (c) the customer is provided with the information specified in Article 10(2)(b) of the Energy Efficiency Directive in the manner mentioned in that provision;

- (d) where the customer so requests, the customer or another person acting on the customer's behalf is provided with the information specified in Article 9(2)(d) of the Energy Efficiency Directive in the manner mentioned in that provision;
  - (e) the meter is physically secure and any information provided by it is held in a manner that complies with the requirements of any relevant legislation relating to data protection; and
  - (f) advice and information specified in Article 9(2)(e) of the Energy Efficiency Directive is provided to the customer.
- (2) For the purposes of paragraph (1)(b) and (c), the reference to Article 10(2) of the Energy Efficiency Directive is to be read as a reference to that Article with the modifications that—
- (a) the words “installed in accordance with Directives [2009/72/EC](#) and [2009/73/EC](#)” are to be omitted; and
  - (b) the reference to “Member States” is to be read as a reference to “the Authority”.
- (3) Where a customer of the holder of a licence under Article 8(1)(c) does not take a supply of gas through a smart meter, the conditions included in that licence must require the holder of the licence to ensure that any bill or statement of account provided to the customer is accurate and based on actual consumption and that the information specified in paragraph 1.1 of Annex VII to the Energy Efficiency Directive is provided to the customer in the manner specified in that provision.
- (4) The conditions included in a licence under Article 8(1)(c) must require the holder of the licence to ensure that—
- (a) where a customer so requests, the information specified in Article 10(3)(a) of the Energy Efficiency Directive is provided to an energy service provider designated by the customer;
  - (b) any bill or statement of account sent to the customer—
    - (i) contains the information specified in Article 10(3)(c) of and paragraph 1.2 and 1.3 of Annex VII to the Energy Efficiency Directive;
    - (ii) complies with any guidance issued and published by the Authority; and
    - (iii) where the customer so requests, is provided in an electronic format;
  - (c) where a customer so requests, the information specified in 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 specified in paragraph 1.3 of Annex VII to the Energy Efficiency Directive in contract documentation;
  - (e) any information provided to a customer in accordance with conditions included under this paragraph is provided in a timely manner and in an easily understandable format enabling customers to compare deals on a like-for-like basis;
  - (f) a charge is not made in respect of any bill or statement of account sent to a customer or in respect of any information provided to the customer (whether in the bill or statement of account or otherwise).
- (5) The duty on the Authority in paragraph (1) to include conditions in a licence only has 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 Directives [2009/125/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
    - (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 communications network” has the same meaning as in section 32 of the Communications Act 2003; and
  - (d) other expressions which are also used in the Energy Efficiency Directive have the same meaning as in that Directive.”.

**120.**—(1) Article 10B (exemption from requirement for system access) is amended as follows.

(2) In paragraph (7)(b)(ii), for the words from “within” to “that paragraph” substitute “which apply to the holder”.

(3) Omit paragraph (9).

(4) After paragraph (10) insert—

“(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 exit 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.”.

(5) Omit paragraph (11).

(6) In paragraph (12)(a), for “Article 10A(3) or (10)” substitute “Article 10A(3) or (17)”.

**121.**—(1) Article 27 (general functions) is amended as follows.

(2) In paragraph (3B)—

- (a) in sub-paragraph (b), for “and (r) to” substitute “, (r) and”;
- (b) omit sub-paragraph (d).

(3) After paragraph (3B) add—

“(3C) For the purposes of paragraph (3B)(c), the reference to Article 41(3)(a) is to be read as if the reference in that provision to Article 41 were a reference to Article 41 as implemented in Northern Ireland immediately before exit day.”.

**122.**—(1) Article 27A (dispute resolution) is amended as follows.

(2) In paragraph (1)(b), for the words from “imposed” to “Directive” substitute “which satisfies the requirement in paragraph (1A)”.

(3) After paragraph (1) insert—

“(1A) The requirement in this paragraph is that either—

- (a) the obligation is an obligation imposed on the holder before exit day pursuant to the Directive, including such an obligation as modified on or after exit day, or
- (b) both the following apply—
  - (i) the obligation was imposed on the holder on or after exit day, and
  - (ii) the obligation is such that, if it had been imposed immediately before exit day, it would have been an obligation imposed pursuant to the Directive;

and in this paragraph “the holder” means the holder mentioned in paragraph (1)(a).”.

**123.** In Article 38A (requirements for major pipelines etc.), in paragraph (5)—

- (a) for “the criteria” substitute “objective and non-discriminatory criteria”;
- (b) omit “for the purposes of and in accordance with Article 4(2) of the Directive”.

**124.**—(1) Article 39A (exemption from relevant requirements) is amended as follows.

(2) In paragraph (2)(b), for “with” to “Directive” substitute “with provisions corresponding to those set out in Articles 32, 33 or 34 of the Directive”;

(3) After paragraph (2) insert—

“(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 retained EU law;
  - (iv) paragraph (4) is to be omitted.”.

(4) Omit paragraph (4).

**125.**—(1) Article 39B (review of exemptions under Article 39A) is amended as follows.

(2) Omit paragraphs (1) and (2).

(3) In paragraph (4)—

(a) in sub-paragraph (a)—

- (i) after “if” insert “before exit day”;
- (ii) after “paragraph (1)” insert “(as it then had effect)”;

(b) in sub-paragraph (b), after “if” insert “before exit day”;

(c) for sub-paragraph (c) substitute—

“(c) if—

- (i) before exit day the Authority sent the European Commission a copy of the exemption and terms under paragraph (1) (as it then had effect), and

- (ii) the European Commission does not act as described in paragraph (a) or (b) before exit day,  
the date four months after the Authority sent the European Commission a copy of the exemption under paragraph (1) or exit day, whichever is the sooner;
- (d) if the decision to give the exemption was published under Article 39A(12) on or after exit day, the date on which the decision was published under Article 39A(12).”.

**126.** In Article 45 (directions restricting the use of certain information), in paragraph (1A), for the words from “information” to the end substitute “commercially sensitive information obtained in the course of carrying out its business, except in accordance with a legal duty to disclose information.”.

### **The Energy (Northern Ireland) Order 2003**

**127.** The Energy (Northern Ireland) Order 2003(21) is amended as follows.

**128.** In Article 2 (interpretation), in paragraph (2)—

- (a) omit the definition of “the Agency”;
- (b) omit the definition of “the Agency Regulation”;
- (c) omit the definition of “designated regulatory authority”;
- (d) at the appropriate places insert—

““designated regulatory electricity function” means a function of the Authority conferred by—

- (a) a provision of retained EU law, or
- (b) a condition in a licence under Article 10 of the Electricity Order, as that condition is modified from time to time on or after exit day,

where that function was, immediately before exit day, one of its functions as a regulatory authority designated in accordance with Article 35 of the Electricity Directive;”;

““the designated regulatory electricity objectives” means the objectives set out in Article 36(c) to (h) of the Electricity Directive but read with the following modifications—

- (a) in Article 36(c), for the words from “between” to the end substitute “, including enabling the development of appropriate cross-border transmission capacities to meet demand;”;
- (b) in Article 36(d), omit “, in line with general energy policy objectives,”;
- (c) in Article 36(f), omit “and foster market integration”, and
- (d) in Article 36(g) for “their national market” substitute “the energy market in Northern Ireland;”;

““designated regulatory functions” means any designated regulatory electricity function and any designated regulatory gas function;”;

““designated regulatory gas function” means a function of the Authority conferred by—

- (a) a provision of retained EU law, or

(21) S.I. 2003/419 (N.I. 6). Relevant amendments have been made by S.R. 2005 No. 335, 2009 No. 35, 2011 No. 155, 2013 No. 92 and 2014 No. 198.

- (b) a condition in a licence under Article 8 of the Gas Order, as that condition is modified from time to time on or after exit day,

where that function was, immediately before exit day, one of its functions as a regulatory authority designated in accordance with Article 39 of the Gas Directive;”;

““the designated regulatory gas objectives” means the objectives set out in Article 40(c) to (h) of the Gas Directive but read with the following modifications—

- (a) in Article 40(c), for the words from “between” to the end substitute “, including enabling the development of appropriate cross-border transmission capacities to meet demand;”,
- (b) in Article 40(d), omit “, in line with general energy policy objectives;”,
- (c) in Article 40(f), omit “and foster market integration”, and
- (d) in Article 40(g) for “their national market,” substitute “the market for gas in Northern Ireland”;

““Great Britain authority” means the Gas and Electricity Markets Authority;”.

**129.**—(1) Article 3A (designation of Authority as national regulatory authority for Northern Ireland) is amended as follows.

- (2) For the heading substitute “Exercise of designated regulatory functions etc.”.

- (3) Omit paragraph (1).

(4) In paragraph (2), for the words “functions as designated regulatory authority for Northern Ireland” substitute “designated regulatory functions”.

- (5) Omit paragraph (3).

**130.** Omit Article 6A.

**131.**—(1) Article 6B (decisions of the Agency for the Cooperation of Energy Regulators and of the European Commission) is amended as follows.

- (2) Renumber the existing Article as paragraph (1).

- (3) After paragraph (1) insert—

“(2) For the purposes of paragraph (1), a binding decision does not include a decision that is not, or so much of a decision as is not, retained EU law.”.

**132.** In Article 7 (publication by Authority of advice and information about consumer matters), in paragraph (5)(a)(i), after “European Commission” insert “before exit day”.

**133.** In Article 8 (powers of Authority in relation to external matters), in paragraph (1), omit sub-paragraph (b).

**134.**—(1) Article 8A (duty on the Authority to have regard to the need for consultation and co-operation with other authorities) is amended as follows.

- (2) In paragraph (1)—

- (a) for the words “functions as designated regulatory authority for Northern Ireland” substitute “designated regulatory functions”;

- (b) in sub-paragraph (a), for the words from “the Agency” to the end substitute “the Great Britain authority or the regulatory authorities of other countries or territories”;

- (c) in sub-paragraph (b)—

- (i) for the words from “Agency” to “Member States” substitute “Great Britain authority”;



- (ii) for “they” substitute “it”;
  - (iii) for the words from “their functions” to “the Agency Regulation” substitute “any functions of the Great Britain authority corresponding to the Authority’s designated regulatory functions”.
- (3) Omit paragraph (2).
- (4) In paragraph (3), omit the definition of “region”.

**135.**—(1) Article 12 (principal objective and general duties of the Department and the Authority in relation to electricity) is amended as follows.

- (2) In paragraph (1A)—
- (a) for the words “functions as designated regulatory authority for Northern Ireland” substituted “designated regulatory electricity functions”;
  - (b) for the words from “objectives” to the end substitute “designated regulatory electricity objectives”.
- (3) In paragraph (5A)—
- (a) in sub-paragraph (a), after “provided” insert “which would, immediately before exit day, have been”;
  - (b) in sub-paragraph (b) for “in accordance with” substitute “as described in”.
- (4) After paragraph (5A) insert—
- “(5AA) For the purposes of paragraph (5A), references to Article 15 are to be read as references to that Article with the modification that references to “Member States” are to be read as references to “the Department and the Authority”.”.
- (5) Omit paragraphs (5B) and (5C).

**136.**—(1) Article 13 (exceptions from the general duties) is amended as follows.

- (2) In paragraph (1B), for the words from “objectives” to the end substitute “designated regulatory electricity objectives”.
- (3) In paragraph (4), for “Community obligation” substitute “retained EU obligation”.

**137.**—(1) Article 14 (principal objective and general duties of the Department and the Authority in relation to gas) is amended as follows.

- (2) In paragraph (1), for the words from “pursuant” to the end substitute “of the designated regulatory gas objectives”.
- (3) Omit paragraph (5B).

**138.** In Article 15 (exceptions from the general duties), in paragraph (4), for “Community obligation” substitute “retained EU obligation”.

**139.**—(1) Article 38 (modification of licences: general provisions) is amended as follows.

- (2) In paragraph (1), for the words from “the requirements” to the end substitute “any requirements and prohibitions contained in retained EU law which correspond to prohibitions and requirements in the Electricity Directive”.
- (3) In paragraph (2), for the words from “the requirements” to the end substitute “any requirements and prohibitions contained in retained EU law which correspond to prohibitions and requirements in the Gas Directive”.

**140.**—(1) In Article 45 (financial penalties), in paragraph (9)(b), for “pursuant to” substitute “by or under a provision referring to a provision of”.

(2) For the purposes of Article 45 of the Energy (Northern Ireland) Order 2003, the reference in paragraph (1) of that Article to “any provision of a Community Regulation” is to be treated on and after exit day as including a reference to any provision of a Community Regulation (within the meaning given in that Article) as it had effect in EU law at any time before exit day.

**141.** In Article 54B (amounts of electricity specified in certificates), in paragraph (4)(f), for “Community obligation” substitute “retained EU obligation”.

**142.** In Article 55F (interpretation of Articles 52 to 55F), in paragraph (1) omit the definition of “Great Britain authority”.

**143.** In Article 56 (power to amend Part VII), in paragraph (1)—

- (a) in sub-paragraph (b)(i), for “Community obligation” substitute “retained EU obligation”;
- (b) in sub-paragraph (b)(ii), for “member State” substitute “country”.

**144.** In Article 62 (reasons for decisions), in paragraph (1)(g), for “functions as designated regulatory authority for Northern Ireland” substitute “designated regulatory functions”.

**145.** In Article 63 (general restrictions on disclosure of information), in paragraph (4)(i), for “Community obligation” substitute “retained EU obligation”.

#### **The Electricity (Single Wholesale Market) (Northern Ireland) Order 2007**

**146.** In the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007<sup>(22)</sup>, in Article 10 (exceptions from the general duties), in paragraph (4), for “EU obligation” substitute “retained EU obligation”.

#### **The Electricity (Priority Dispatch) Regulations (Northern Ireland) 2012**

**147.** The Electricity (Priority Dispatch) Regulations (Northern Ireland) 2012<sup>(23)</sup> are amended as follows.

**148.** In regulation 3 (existing transmission and distribution licences), omit “Article 16(2)(c) of [Directive 2009/28/EC](#) and Article 15(5)(c) of [Directive 2012/27/EU](#) and, in particular,”.

**149.** In regulation 5 (interpretation), in paragraph (1), omit the definition of “[Directive 2012/27/EU](#)”.

## **PART 5**

### **Amendment of EU Regulations and Decisions**

#### **The Electricity Regulation**

**150.**—(1) The Electricity Regulation is amended as set out in Schedule 1.

(2) In this regulation and in Schedule 1, “the Electricity Regulation” means Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003<sup>(24)</sup>.

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<sup>(22)</sup> S.I. 2007 No. 913 (N.I. 7). Article 10(4) was amended by S.I. 2011/1043.

<sup>(23)</sup> S.R. 2012 No. 385. Relevant amendments were made by S.R. 2014 No. 198.

<sup>(24)</sup> Further amendments to the Electricity Regulation are made by S.I. 2018/1286.

## The Gas Regulation

**151.**—(1) The Gas Regulation is amended as set out in Schedule 2.

(2) In this regulation and in Schedule 2, “the Gas Regulation” means Regulation (EC) 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(25).

## Revocations and savings

**152.**—(1) The EU Regulations and Decisions specified in Schedule 3 are revoked.

(2) The revocation of the TEN-E Regulation by paragraph (1) and Schedule 3 is subject to the savings provisions in Schedule 4.

(3) In this regulation and in Schedules 3 and 4, “the TEN-E Regulation” means Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009.

Date

*Name*  
Minister of State  
Department for Business, Energy and Industrial  
Strategy

SCHEDULE 1

Regulation 150

The Electricity Regulation

- 1.—(1) Article 1 of the Electricity Regulation (subject-matter and scope) is amended as follows.
- (2) In point (a)—
  - (a) in the first sentence, omit the words from “, thus” to the end;
  - (b) for the second sentence substitute—

“This involves the setting of principles on cross-border transmission charges and the allocation of available capacity of interconnections between the transmission systems of Great Britain or Northern Ireland and transmission systems of other countries or territories.”.
- (3) In point (b), omit the second sentence.
2. For Article 2 (definitions) substitute—

*“Article 2  
Definitions*

In this Regulation—

“congestion”—

- (a) in relation to Great Britain, means a situation in which an interconnection linking the Great Britain transmission network with the transmission network of another country or territory cannot accommodate all physical flows resulting from international trade required by market participants, because of a lack of capacity of the interconnectors or the transmission systems concerned;
- (b) in relation to Northern Ireland, means a situation in which an interconnection linking the Northern Ireland transmission network with the transmission network of Great Britain or with that of a third country cannot accommodate all physical flows resulting from international trade required by market participants, because of a lack of capacity of the interconnectors or the transmission systems concerned;

“cross-border flow”—

- (a) in relation to Great Britain, means a physical flow of electricity on the Great Britain transmission network that results from the impact of the activity of producers or consumers, or both producers and consumers, outside Great Britain on its transmission network;
- (b) in relation to Northern Ireland, means a physical flow of electricity on the Northern Ireland transmission network that results from the impact of the activity of producers or consumers, or both producers and consumers, from outside the SEM on the Northern Ireland transmission network;

“customer” means a wholesale or final customer of electricity;

“declared export”—

- (a) in relation to Great Britain, means the dispatch of electricity in Great Britain on the basis of an underlying contractual arrangement to the effect that the simultaneous corresponding take-up of electricity will take place in another country or territory;
- (b) in relation to Northern Ireland, means the dispatch of electricity in Northern Ireland on the basis of an underlying contractual arrangement to the effect that the simultaneous

corresponding take-up of electricity will take place in Great Britain or in a third country;

“declared import”—

- (a) in relation to Great Britain, means the take-up of electricity in Great Britain simultaneously with the dispatch of electricity in another country or territory;
- (b) in relation to Northern Ireland, means the take-up of electricity in Northern Ireland simultaneously with the dispatch of electricity in Great Britain or in a third country;

“declared transit” means a circumstance where a declared export of electricity occurs and where the nominated path for the transaction involves a country or territory in which neither the dispatch nor the simultaneous corresponding take-up of the electricity will take place;

“distribution” means the transport of electricity on high-voltage, medium-voltage and low-voltage distribution systems with a view to its delivery to customers, but does not include supply;

“distribution system operator” or “DSO” means a person responsible for operating, ensuring the maintenance of and, if necessary, developing the distribution system in a given area and, where applicable, its interconnections with other systems, and for ensuring the long-term ability of the system to meet reasonable demands for the distribution of electricity;

“final customer” means a customer purchasing electricity for the customer’s own use;

“generation” means the production of electricity;

“interconnected system” means a number of transmission and distribution systems linked together by means of one or more interconnectors;

“interconnector”—

- (a) in relation to Great Britain, means a transmission line which crosses or spans a border between Great Britain and a member State, or between Great Britain and Northern Ireland, and which connects the national transmission system of Great Britain with the transmission system of that other state or territory;
- (b) in relation to Northern Ireland, means a transmission line which crosses or spans a border between Northern Ireland and a member State other than Ireland, or between Northern Ireland and Great Britain and which connects the transmission system in Northern Ireland with the transmission system of that other state or territory;

“the jurisdiction of Great Britain” has the meaning given in section 4(3F)(a) of the Electricity Act 1989<sup>(26)</sup>;

“the national competition authority” means the Competition and Markets Authority;

“new interconnector” means an interconnector not completed by 4th August 2003;

“Northern Ireland” has the meaning given in section 98 of the Northern Ireland Act 1998<sup>(27)</sup>;

“producer” means a person generating electricity;

“the regulatory authority”—

- (a) in relation to Great Britain, means the Gas and Electricity Markets Authority;
- (b) in relation to Northern Ireland, means the Northern Ireland Authority for Utility Regulation;

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<sup>(26)</sup> 1989 c. 29. Section 4(3F) was inserted by section 145(3) of the Energy Act 2004 (c. 20).

<sup>(27)</sup> 1998 c. 47.

“the SEM” means the Single Electricity Market as defined in Article 2 of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007(28);

“supply” means the sale, including resale, of electricity to customers;

“system user” means a person supplying to, or being supplied by, a transmission or distribution system;

“third country” means a country other than the United Kingdom or Ireland;

“transmission” means the transport of electricity on the extra high-voltage and high-voltage interconnected system with a view to its delivery to final customers or to distributors, but does not include supply;

“transmission system operator” or “TSO”—

(a) in relation to Great Britain, means a person who is designated as an electricity transmission system operator under section 10H of the Electricity Act 1989(29);

(b) in relation to Northern Ireland, means a person who is designated as an electricity transmission system operator under Article 10H of the Electricity (Northern Ireland) Order 1992(30);

“wholesale customer” means a person purchasing electricity for the purpose of resale within or outside the United Kingdom.”.

3. Omit Articles 3 to 5.

4. Omit Articles 8 to 13.

5.—(1) Article 14 (charges for access to networks) is amended as follows.

(2) In paragraph 2, omit “at Community level”.

(3) In paragraph 3, omit point (a).

6.—(1) Article 15 (provision of information) is amended as follows.

(2) In paragraph 2, for “authorities” substitute “authority”.

(3) In paragraph 6, for “the national regulatory authority, the national competition authority and the Commission” substitute “the regulatory authority and the national competition authority”.

7. In Article 16 (general principles of congestion management), in paragraph 6—

(a) in the second subparagraph—

(i) for “authorities of the Member States concerned” substitute “authority”;

(ii) for “those regulatory authorities” substitute “the regulatory authority”;

(iii) for “authorities when” substitute “authority when”;

(b) in the third subparagraph, omit the second sentence.

8.—(1) Article 17 (new interconnectors) is amended as follows.

(2) In paragraph 1—

(a) in the words before point (a), for the words from “the provisions of” to “[Directive 2009/72/EC](#)” substitute “the provisions specified in paragraph 4A”;

(b) in point (e), omit the words from the beginning to “electricity.”;

(28) [S.I. 2007/913 \(N.I. 7\)](#). The definition of “the SEM” in Article 2(2) was substituted by [S.R. 2016 No.129](#).

(29) Section 10H was inserted by [S.I. 2011/2704](#).

(30) [S.I. 1992/231 \(N.I. 1\)](#). Article 10H was inserted by [S.R. 2011 No.155](#).

- (c) in point (f), for “the internal market in electricity” substitute “electricity markets in the United Kingdom”.
- (3) In paragraph 4—
  - (a) in the first subparagraph, for “the regulatory authorities of the Member States concerned” substitute “the regulatory authority”;
  - (b) omit the second subparagraph;
  - (c) in the fourth subparagraph, for “the regulatory authorities of the Member States concerned” substitute “the regulatory authority”;
  - (d) omit the fifth subparagraph.
- (4) After paragraph 4 insert—
  - “**4A.** The provisions specified for the purposes of paragraph 1 are—
    - (a) Article 16(6) of this Regulation;
    - (b) provisions of the standard conditions of interconnector licences relating to—
      - (i) the provision of third-party access to an interconnector;
      - (ii) tariffs or charging methodologies for such access;
      - (iii) use of revenues.”.
- (5) Omit paragraphs 5 to 9.
- 9.**—(1) Article 19 (regulatory authorities) is amended as follows.
  - (2) For the heading substitute “The regulatory authority”.
  - (3) In the first sentence—
    - (a) for “authorities” substitute “authority”;
    - (b) for “their” substitute “its”;
    - (c) at the end, insert “before exit day in so far as they are retained EU law (including such Guidelines as amended from time to time)”.
  - (4) Omit the second sentence.
- 10.** Omit Articles 20, 21 and 22.
- 11.** Omit Article 24.
- 12.** In Article 25 (repeal)—
  - (a) omit the first sentence;
  - (b) in the second sentence, for “the repealed Regulation” substitute “Regulation (EC) No. 1228/2003 in retained direct EU legislation”.
- 13.** In the text after Article 26 omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.
- 14.**—(1) Annex I (guidelines on the management and allocation of available transfer capacity of interconnections between national systems) is amended as follows.
  - (2) In point 1.5—
    - (a) after “TSOs,” insert “and”;
    - (b) omit the words from “and be suitable” to the end.
  - (3) In point 1.7, in the first sentence, for “the internal market in electricity” substitute “electricity markets in the United Kingdom”.

- (4) Omit points 1.8 and 1.9.
  - (5) In point 1.10 —
    - (a) for “national regulatory authorities” substitute “regulatory authority”;
    - (b) omit “and those Guidelines”;
    - (c) for “authorities themselves” substitute “authority”.
  - (6) In point 2.6, for “respective regulatory authorities” substitute “regulatory authority”.
  - (7) In point 2.10, for “the relevant regulatory and/or competition authorities” substitute “the regulatory authority or the national competition authority”.
  - (8) In point 2.13, for “relevant national regulatory authority or authorities” substitute “regulatory authority”.
  - (9) Omit points 3.1 to 3.6, and the heading preceding point 3.1.
  - (10) Omit point 4.4.
  - (11) In point 5.2, for “authorities of the Member States concerned” substitute “authority”.
  - (12) In point 5.4, for “of the national regulatory authorities” substitute “by the regulatory authority”.
  - (13) In point 5.10—
    - (a) in the second sentence, for “authorities and to the Commission” substitute “authority”;
    - (b) in the third sentence, for “authorities and the Commission” substitute “authority”.
  - (14) In point 6.1, in the second sentence, for “authorities” substitute “authority”.
  - (15) In point 6.2, for “National regulatory authorities” substitute “The regulatory authority”.
  - (16) Omit point 6.3.
  - (17) In point 6.4, in the second sentence—
    - (a) for “Regulatory authorities” substitute “The regulatory authority”;
    - (b) omit “and those Guidelines”.
  - (18) In point 6.5—
    - (a) for “authorities” substitute “authority”;
    - (b) omit “and those Guidelines”.
- 15.** In Annex II (correlation table), in the table omit the rows which refer in the second column to Articles 3, 4, 5, 8, 9, 10, 11, 12, 13, 20, 21, 22 and 24.

## SCHEDULE 2

Regulation 151

### The Gas Regulation

- 1.** For Article 1 of the Gas Regulation (subject-matter and scope) substitute—

#### *“Article 1*

#### *Subject matter and scope*

- 1.** This Regulation aims at—
  - (a) setting non-discriminatory rules for access conditions to natural gas transmission systems with a view to ensuring the proper functioning of the market in gas;



- (b) setting non-discriminatory rules for access conditions to LNG facilities and storage facilities;
- (c) facilitating the emergence of a well-functioning and transparent wholesale market with a high level of security of supply in gas.

2. The objectives referred to in paragraph 1 include the setting of principles for tariffs, or the methodologies underlying their calculation, for access to the network, but not to storage facilities, the establishment of third-party access services and principles for capacity allocation and congestion-management, the determination of transparency requirements, balancing rules and imbalance charges, and the facilitation of capacity trading.

3. In so far as this Regulation applies to storage facilities, it applies only to—

- (a) storage facilities within the jurisdiction of Great Britain to which section 19B of the Gas Act 1986<sup>(31)</sup> applies; and
- (b) storage facilities in Northern Ireland, other than those to which an exemption has been granted in accordance with Article 39A of the Gas (Northern Ireland) Order 1996<sup>(32)</sup>,

except for Article 19(4) which applies to all storage facilities.”.

2. For Article 2 (definitions) substitute—

*“Article 2*

*Definitions*

In this Regulation—

“ancillary services” means all services necessary for access to and the operation of transmission networks, distribution networks, LNG facilities or storage facilities, including load balancing, blending and injection of inert gases, but not including facilities reserved exclusively for transmission system operators carrying out their functions;

“available capacity” means the part of the technical capacity of a transmission system that is not allocated and is still available to the system;

“balancing period” means the period within which the off-take of an amount of natural gas, expressed in units of energy, must be offset by every network user by means of the injection of the same amount of natural gas into the transmission network in accordance with a transport contract or network code;

“capacity” means transmission system capacity, LNG facility capacity or storage facility capacity;

“congestion management” means management of the capacity portfolio of a transmission system operator with a view to optimal and maximum use of the technical capacity and the timely detection of future congestion and saturation points;

“connected country or territory” means the other part of the United Kingdom, a connected member State or a connected third country;

“connected member State”—

- (a) in relation to Great Britain, means a member State, the transmission system of which is connected to the Great Britain transmission system by an interconnector;
- (b) in relation to Northern Ireland, means a member State, the transmission system of which is connected to the Northern Ireland transmission system by an interconnector;

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<sup>(31)</sup> 1986 c. 44. Section 19B was inserted by S.I. 2000/1937 and amended by S.I. 2004/2043 and 2011/2704.

<sup>(32)</sup> S.I. 1996/275 (N.I. 2). Article 39A was inserted by S.R. 2013 No. 92.

“connected third country”—

- (a) in relation to Great Britain, means a country or territory other than Northern Ireland or a member State, the transmission system of which is directly connected to the Great Britain transmission system;
- (b) in relation to Northern Ireland, means a country or territory other than Great Britain or a member State, the transmission system of which is directly connected to the Northern Ireland transmission system;

“contracted capacity” means capacity that a system operator has allocated to a network user by means of a contract;

“contractual congestion” means a situation where the level of firm capacity demand exceeds the technical capacity of a system;

“customer” means a wholesale or final customer of natural gas or a natural gas undertaking which purchases natural gas;

“deliverability” means the rate at which a storage facility user is entitled to withdraw gas from the storage facility;

“distribution” means the transport of natural gas through local or regional pipeline networks with a view to its delivery to customers, but not including supply;

“distribution system operator” means a person who carries out the function of distribution and is responsible for operating, ensuring the maintenance of, and, if necessary, developing the distribution system in a given area and, where applicable, its interconnections with other systems, and for ensuring the long-term ability of the system to meet reasonable demands for the distribution of gas;

“final customer” means a customer purchasing natural gas for the customer’s own use;

“firm capacity” means capacity contractually guaranteed as uninterruptible by a system operator;

“firm services” means services offered by a system operator in relation to firm capacity;

“injectability” means the rate at which a storage facility user is entitled to inject gas into the storage facility;

“interconnection point” has the meaning given in Article 3 of Commission Regulation (EU) 2017/459 establishing a network code on capacity allocation mechanisms in gas transmission systems;

“interconnector”—

- (a) in relation to Great Britain, means a transmission line which crosses or spans a border between Great Britain and a member State, or between Great Britain and Northern Ireland, for the sole or main purpose of connecting the transmission systems of those countries or territories;
- (b) in relation to Northern Ireland, means a transmission line which crosses or spans a border between Northern Ireland and a member State, or between Northern Ireland and Great Britain, for the sole or main purpose of connecting the transmission systems of those countries or territories;

“interruptible capacity” means capacity that may be interrupted by a system operator in accordance with the conditions stipulated in a contract;

“interruptible services” means services offered by a system operator in relation to interruptible capacity;

“the jurisdiction of Great Britain” has the meaning given in section 5(9) of the Gas Act 1986;

“linepack” means the storage of gas by compression in gas transmission and distribution systems, but not including facilities reserved for transmission system operators carrying out their functions;

“LNG facility” means a terminal which is used for the liquefaction of natural gas or the importation, offloading and re-gasification of LNG, and includes ancillary services and temporary storage necessary for the re-gasification process and subsequent delivery to the transmission system, but does not include any part of LNG terminals used for storage;

“LNG facility capacity” means capacity at an LNG facility for the liquefaction of natural gas or the importation, offloading, ancillary services, temporary storage and re-gasification of LNG;

“LNG system operator” means a person who carries out the function of liquefaction of natural gas, or the importation, offloading and re-gasification of LNG and who is responsible for operating an LNG facility;

“long-term services” means services offered by a system operator with a duration of one year or more;

“the national regulatory authority”—

- (a) in relation to Great Britain, means the Gas and Electricity Markets Authority;
- (b) in relation to Northern Ireland, means the Northern Ireland Authority for Utility Regulation;

“natural gas undertaking” means a person carrying out one or more of the functions of production, transmission, distribution, supply, purchase or storage of natural gas, including LNG, which is responsible for the commercial, technical or maintenance tasks (or any combination of those tasks) related to those functions, but does not include final customers;

“network user” means a customer or a potential customer of a transmission system operator, and transmission system operators themselves in so far as it is necessary for them to carry out their functions in relation to transmission;

“new infrastructure” means infrastructure not completed by 4th August 2003;

“nomination” means the prior reporting by a network user to a transmission system operator of the actual flow that the network user wishes to inject into or withdraw from the system;

“non-UK TSO” means a person, other than a person that falls within the definition of “transmission system operator”, who carries out the function of transmission and is responsible for operating, ensuring the maintenance of, and, if necessary developing the transmission system in a given area other than the United Kingdom, and, where applicable, its interconnections with other systems, and ensuring the long-term ability of the system to meet reasonable demands for the transport of gas;

“Northern Ireland” has the meaning given in section 98 of the Northern Ireland Act 1998(33);

“other part of the United Kingdom”—

- (a) in relation to Great Britain, means Northern Ireland;
- (b) in relation to Northern Ireland, means Great Britain;

“physical congestion” means a situation where the level of demand for actual deliveries of gas exceeds the technical capacity of a system;

“primary market” means the market of the capacity traded directly by a system operator;

“re-nomination” means the subsequent reporting of a corrected nomination;

“secondary market” means the market of the capacity traded otherwise than on the primary market;

“short-term services” means services offered by a system operator with a duration of less than one year;

“space” means the volume of gas which a user of a storage facility is entitled to use for the storage of gas;

“storage capacity” means any combination of space, injectability and deliverability;

“storage facility” means a facility used for the stocking of natural gas and owned or operated by a natural gas undertaking, including the part of LNG facilities used for storage but excluding the portion used for production operations, and excluding facilities reserved exclusively for transmission system operators in carrying out their functions;

“storage system operator” means a person who carries out the function of storage and is responsible for operating a storage facility;

“supply” means the sale, including resale, of natural gas, including LNG, to customers;

“system” means any transmission networks, distribution networks, LNG facilities or storage facilities, or combination of such networks or facilities, owned or operated by a natural gas undertaking, including linepack and its facilities supplying ancillary services and those of related undertakings necessary for providing access to transmission, distribution and LNG;

“system integrity” means any situation in respect of a transmission network including necessary transmission facilities in which the pressure and the quality of the natural gas remain within the minimum and maximum limits laid down by the transmission system operator, so that the transmission of natural gas is guaranteed from a technical standpoint;

“system operator” means a transmission system operator, LNG system operator or storage system operator;

“system user” means a person supplying to, or being supplied by, the system;

“technical capacity” means the maximum firm capacity that a transmission system operator can offer to network users, taking account of system integrity and the operational requirements of the transmission network;

“transmission” means the transport of natural gas through a network, which mainly contains high-pressure pipelines, other than an upstream pipeline network and other than the part of high-pressure pipelines primarily used in the context of local distribution of natural gas, with a view to its delivery to customers, but not including supply;

“transmission system capacity” means the maximum flow, expressed in normal cubic metres per time unit or in energy unit per time unit, to which a network user is entitled in accordance with the provisions of a transport contract;

“transmission system operator”—

- (a) in relation to Great Britain, means a person who is designated as a gas transmission system operator under section 8J of the Gas Act 1986<sup>(34)</sup>;
- (b) in relation to Northern Ireland, means a person who is designated as a gas transmission system operator under Article 8H of the Gas (Northern Ireland) Order 1996<sup>(35)</sup>;

“transport contract” means a contract which a transmission system operator has concluded with a network user with a view to carrying out transmission;

“unused capacity” means firm capacity which a network user has acquired under a transport contract but which that user has not nominated by the deadline specified in the contract;

<sup>(34)</sup> 1986 c. 44. Section 8J was inserted by S.I. 2011/2704.

<sup>(35)</sup> S.I. 1996/275 (N.I. 2). Article 8H was inserted by S.R. 2011 No. 155.

“upstream pipeline network” means any pipeline or network of pipelines operated or constructed as part of an oil or gas production project, or used to convey natural gas from one or more such projects to a processing plant or terminal or final coastal landing terminal; “wholesale customer” means a person other than a transmission system operator or distribution system operator who purchases natural gas for the purpose of resale inside or outside the system where the person is established.”.

3. Omit Articles 3 to 5.
4. Omit Articles 8 to 12.
- 5.—(1) Article 13 (tariffs for access to networks) is amended as follows.
  - (2) In paragraph 1—
    - (a) in the first subparagraph—
      - (i) for “the regulatory authorities”, in both places that it occurs, substitute “the national regulatory authority”;
      - (ii) omit the words from “pursuant to” (where they first appear) to “that Directive”;
    - (b) in the second subparagraph—
      - (i) for “Member States may decide that tariffs” substitute “Tariffs”;
      - (ii) before “regulatory” insert “national”;
    - (c) in the fourth subparagraph—
      - (i) in the second sentence, for “authorities” substitute “authority”;
      - (ii) in the third sentence, for the words from the beginning to “shall not be”, substitute “The national regulatory authority must ensure that network charges are not”.
  - (3) In paragraph 2, omit the second sentence.
6. In Article 14 (third-party access services concerning transmission system operators), in paragraph 1, in the second subparagraph—
  - (a) for “competent” substitute “national regulatory”;
  - (b) omit the words from “in accordance with” to the end.
- 7.—(1) Article 16 (principles of capacity-allocation mechanisms and congestion-management procedures concerning transmission system operators) is amended as follows.
  - (2) In paragraph 2, for point (c) substitute—

“(c) be compatible with the network access systems of—

    - (i) the other part of the United Kingdom and connected member States; and
    - (ii) if the national regulatory authority so directs, connected third countries;”.
  - (3) In paragraph 3, omit the second subparagraph.
  - (4) In paragraph 4, for “regulatory authorities” substitute “national regulatory authority”.
- 8.—(1) Article 18 (transparency requirements concerning transmission system operators) is amended as follows.
  - (2) In paragraph 2, omit “or relevant national authorities”.
  - (3) In paragraph 4, for “competent authorities” substitute “national regulatory authority”.
9. In Article 19 (transparency requirements concerning storage facilities and LNG facilities), in paragraph 5, omit “or relevant regulatory authorities”.

10. In Article 20 (record keeping by system operators), for the words from “the national authorities” to “the Commission” substitute “the national regulatory authority and the Competition and Markets Authority”.

11. In Article 21 (balancing rules and imbalance charges), for paragraph 4 substitute—

“4. Transmission system operators must, in order to facilitate gas trade, endeavour to harmonise balancing regimes and streamline structures and levels of balancing charges with those of transmission systems—

- (a) in the other part of the United Kingdom and connected member States; and
- (b) if the national regulatory authority so directs, in connected third countries.”.

12. In Article 22 (trading of capacity rights), in the second paragraph, for “regulatory authorities” substitute “national regulatory authority”.

13.—(1) Article 24 (regulatory authorities) is amended as follows.

(2) For the heading, substitute “The national regulatory authority”.

(3) In the first paragraph—

- (a) for “their” substitute “its”;
- (b) for “regulatory authorities” substitute “national regulatory authority”;
- (c) omit “and the Guidelines adopted pursuant to Article 23”.

(4) Omit the second paragraph.

14. Omit Articles 25 to 27.

15. Omit Article 29.

16. For Article 30 (derogations and exemptions) substitute—

#### *“Article 30A*

##### *Derogations and exemptions: Great Britain*

This Regulation, except for Article 19(4), does not apply to any of the infrastructure referred to in paragraph (a), (b) or (c), for so long as the certification or exemption referred to in that paragraph is in force—

- (a) an interconnector, the operator of which is certified by the national regulatory authority under section 8F of the Gas Act 1986 on one of the certification grounds in section 8G (7) or (8) of that Act<sup>(36)</sup>;
- (b) a storage facility which is exempt under section 19A of the Gas Act 1986<sup>(37)</sup>; or
- (c) an LNG facility which is exempt under section 19C of the Gas Act 1986<sup>(38)</sup>.

#### *Article 30B*

##### *Derogations and exemptions: Northern Ireland*

This Regulation, except for Article 19(4), does not apply to any of the infrastructure referred to in paragraph (a), (b), (c) or (d), for so long as the certification or exemption referred to in that paragraph is in force—

<sup>(36)</sup> Sections 8F and 8G were inserted by [S.I. 2011/2704](#).

<sup>(37)</sup> Section 19A was inserted by [S.I. 2000/1937](#) and amended by [S.I. 2004/2043](#) and [2011/2704](#).

<sup>(38)</sup> Section 19C was inserted by [S.I. 2000/1937](#) and amended by [S.I. 2004/2043](#) and [2011/2704](#).

- (a) an interconnector, the operator of which is certified by the national regulatory authority under Article 8E of the Gas (Northern Ireland) Order 1996 on the certification ground in Article 8F(6) of that Order<sup>(39)</sup>;
- (b) a transmission system in relation to which an exemption has been granted under Article 10B(1) of the Gas (Northern Ireland) Order 1996<sup>(40)</sup>;
- (c) a storage facility in relation to which an exemption has been granted under Article 39A of the Gas (Northern Ireland) Order 1996<sup>(41)</sup>; or
- (d) an LNG facility in relation to which an exemption has been granted under Article 39A of the Gas (Northern Ireland) Order 1996.”.

17. For the text of Article 31 (repeal) substitute—

“References made to Regulation (EC) No. 1775/2005 in retained direct EU legislation are to be construed as references to this Regulation and read in accordance with the correlation table in Annex II.”.

18. In the text after Article 32 omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

19.—(1) Annex I (guidelines) is amended as follows.

(2) In point 1.5, omit the words from “no later than” to the end.

(3) In point 1.8, after the words “transmission system operators” (in the second place where it appears) insert “, and endeavour to cooperate with non-UK TSOs in connected member States and connected third countries,”.

(4) In point 2.1.6, in the second paragraph, before “regulatory” insert “national”.

(5) In point 2.2.1—

(a) in paragraph 1, in the first subparagraph—

(i) in the first sentence, for the words from “two or more” to the end, substitute—

“Great Britain or Northern Ireland and—

(a) the other part of the United Kingdom or a connected member State; or

(b) if the national regulatory authority so directs, a connected third country,

in so far as the points are subject to booking procedures by users.”;

(ii) omit the second sentence;

(b) omit paragraph 2;

(c) omit paragraph 4.

(6) In point 2.2.2—

(a) in paragraph 1, in the second sentence—

(i) for “adjacent Member States” substitute “connected countries or territories”;

(ii) for “the adjacent national regulatory” substitute “those”;

(b) in paragraph 3, in the third sentence, for “National regulatory authorities” substitute “The national regulatory authority”.

(7) In point 2.2.3—

(a) in paragraph 1—

<sup>(39)</sup> Articles 8E and 8F were inserted by [S.R. 2011 No. 155](#).

<sup>(40)</sup> Article 10B was inserted by [S.R. 2013 No. 92](#).

<sup>(41)</sup> Article 39A was inserted by [S.R. 2013 No. 92](#).

- (i) for “National regulatory authorities” substitute “The national regulatory authority”;
  - (ii) omit from “, on the basis” to “shown that”;
  - (iii) for “the year covered by the monitoring report” substitute “the most recent year for which the national regulatory authority has the relevant information”;
- (b) in paragraph 2—
- (i) for “If, on the basis of the yearly monitoring report, it is shown” substitute “If the national regulatory authority considers”;
  - (ii) for “relevant national regulatory authorities” substitute “national regulatory authority”;
- (c) in paragraph 5—
- (i) omit “— persons or undertakings and the undertakings they control pursuant to Article 3 of Regulation (EC) No 139/2004 —”;
  - (ii) at the end insert “For this purpose, any capacity which is held by a person controlled by a network user is to be treated as capacity held by that network user.”;
- (d) in paragraph 6, omit the second sentence;
- (e) in paragraph 7—
- (i) in the first sentence, at the beginning, for “A” substitute “The”;
  - (ii) in the second sentence, for “adjacent Member States” substitute “connected countries or territories”;
  - (iii) in the third sentence, for “the adjacent national regulatory” substitute “those”.
- (8) In point 2.2.5—
- (a) in paragraph 1, for “National regulatory authorities” substitute “The national regulatory authority”;
  - (b) in paragraph 4, for “national regulatory authorities” substitute “the national regulatory authority”.
- (9) In point 3.1.1(1)—
- (a) in subparagraph (e)—
    - (i) for “authorities” substitute “authority”;
    - (ii) omit “— on the basis of an opinion on a harmonised format that shall be provided by the Agency —”;
  - (b) omit subparagraphs (g) and (h).
- (10) In point 3.2(1)—
- (a) in subparagraph (a), for “the EU” substitute “Great Britain or Northern Ireland”;
  - (b) in subparagraph (d), omit “as defined by Article 2(14) of [Directive 2009/73/EC](#)”.
- (11) In point 3.3(1)—
- (a) in the words before subparagraph (a), for “(a) to (g)”, in both places that it occurs, substitute “(a) to (k)”;
  - (b) omit subparagraph (l).
- (12) In point 3.4(7), in the second sentence, before “regulatory” insert “national”.
- 20.** In Annex II, in the correlation table, omit the rows which refer in the second column to Articles 3, 4, 5, 8, 9, 10, 11, 12, 23, 25, 26, 28 and 29.



## SCHEDULE 3

Regulation 152(1)

### EU Regulations and Decisions: Revocations

1. [Council Regulation \(EEC\) No 625/83](#) of 15 March 1983 establishing specific measures of Community interest relating to energy strategy.
2. [Council Regulation \(EEC\) No 1890/84](#) of 26 June 1984 introducing special measures of Community interest relating to energy strategy.
3. [Regulation \(EC\) No 663/2009](#) of the European Parliament and of the Council of 13 July 2009 establishing a programme to aid economic recovery by granting Community financial assistance to projects in the field of energy.
4. [Regulation \(EC\) No 713/2009](#) of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators.
5. [Regulation \(EU\) No 1233/2010](#) of the European Parliament and of the Council of 15 December 2010 amending [Regulation \(EC\) 663/2009](#) establishing a programme to aid economic financial recovery by granting Community financial assistance to projects in the field of energy.
6. [Commission Decision](#) of 11 August 2011 establishing the composition and the operational provisions of the Gas Coordination Group and repealing [Commission Decision 2006/791/EC](#).
7. [Commission Decision](#) of 15 November 2012 setting up the Electricity Coordination Group.
8. The TEN-E Regulation.
9. [Commission Delegated Regulation \(EU\) No 1391/2013](#) of 14 October 2013 amending [Regulation \(EU\) 347/2013](#) of the European Parliament and of the Council on guidelines for trans-European energy infrastructure as regards the Union list of projects of common interest.
10. [Commission Delegated Regulation \(EU\) 2016/89](#) of 18 November 2015 amending [Regulation \(EU\) No 347/2013](#) of the European Parliament and of the Council as regards the Union list of projects of common interest.
11. [Commission Decision](#) of 9 March 2016 setting up a Commission expert group on electricity interconnection targets.
12. [Commission Delegated Regulation \(EU\) 2018/540](#) of 23 November 2017 amending [Regulation \(EU\) No 347/2013](#) of the European Parliament and of the Council as regards the Union list of projects of common interest.

## SCHEDULE 4

Regulation 152(2)

### The TEN-E Regulation: Savings

1. Chapter III (permit granting and public participation) of, and Annex VI (guidelines for transparency and public participation) to, the TEN-E Regulation continue to apply on and after exit day as if that Regulation had not been revoked, in relation to an existing permit application.
2. In paragraph 1, “an existing permit application” means an application for a permit to carry out works in the United Kingdom or in the UK marine area in relation to a relevant project, for which the statutory permit granting procedure started before exit day.
3. In paragraph 2—  
“a relevant project” means—

- (a) a project which, immediately before exit day, was on the Union list of projects of common interest referred to in Article 3 of the TEN-E Regulation; or
  - (b) a project which had previously been on that list and, immediately before exit day, maintained the rights and obligations arising from Chapter III of the TEN-E Regulation by virtue of the second subparagraph of Article 5(9) of that Regulation;
- “the statutory permit granting procedure” has the meaning given in Article 10(1)(b) of the TEN-E Regulation;
- “the UK marine area” has the meaning given in section 42 of the Marine and Coastal Access Act 2009(42).
4. Where Chapter III of and Annex VI to the TEN-E Regulation apply by virtue of paragraph 1, they apply with the following modifications.
5. Article 7 applies as if paragraphs 4 to 7, and the second subparagraph of paragraph 8, were omitted.
6. Article 8 applies as if—
- (a) in paragraph 1, for “By 16 November 2013, each Member State shall designate one national competent authority which shall be”, there were substituted “The Secretary of State is the competent authority”;
  - (b) in paragraph 2, in the first subparagraph, in point (a), for “the competent authority notifies the Commission of that delegation and the information therein” there were substituted “notice of that delegation”;
  - (c) in paragraph 3—
    - (i) in the first subparagraph, for “Union law” in each place that it occurs, there were substituted “retained EU law”;
    - (ii) the third subparagraph were omitted.
  - (d) in paragraph 4, for “Member States may apply different schemes as set out in paragraph 3” there were substituted “Different schemes as set out in paragraph 3 may be applied”;
  - (e) in paragraph 5—
    - (i) for the words from “two” to “themselves” there were substituted “the United Kingdom and in one or more member States, the competent authority must endeavour to cooperate efficiently and effectively and coordinate with the competent authorities of those member States”;
    - (ii) for “Member States shall endeavour to provide for joint procedures”, there were substituted “The Secretary of State must endeavour to provide for joint procedures with those member States”.
7. Article 9 applies as if—
- (a) in paragraph 1—
    - (i) the first sentence were omitted;
    - (ii) for the second sentence there were substituted “The Secretary of State must update as necessary the manual of procedures for the permit granting process applicable to projects of common interest published under this Article as it applied before exit day, and make it available to the public.”;
  - (b) in paragraph 2, for “Union law” there were substituted “retained EU law”;

- (c) in paragraph 4, in the first subparagraph, in the second sentence, after “according to” there were inserted “retained EU law which, immediately before exit day, implemented”;
  - (d) in paragraph 5—
    - (i) for “two or more Member States” there were substituted “the United Kingdom and one or more member States”;
    - (ii) for “each of the Member States concerned” there were substituted “the United Kingdom”;
  - (e) in paragraph 6—
    - (i) in the first sentence, after “where”, there were inserted “retained EU law which, immediately before exit day, implemented”;
    - (ii) the second sentence were omitted;
  - (f) in paragraph 7, in the first subparagraph, there were omitted “which shall be linked to the Commission website and”.
8. Article 10 applies as if—
- (a) in paragraph 1—
    - (i) in point (a), for the third paragraph, there were substituted—

“The start of the permit granting process is the date of signature by the competent authority of an acknowledgement of the project promoter’s notification of the project, or, if the United Kingdom and one or more member States are concerned, the date of signature of an acknowledgement by the last of the competent authorities concerned.”;
    - (ii) in point (b)—
      - (aa) at the end of the first sentence, there were inserted “or any shorter period specified by legislation”; and
      - (bb) the second sentence were omitted;
  - (b) in paragraph 2—
    - (i) in the first subparagraph, for the second sentence there were substituted—

“However, where the competent authority considers that the statutory permit granting procedure will not be completed before the time limit in paragraph 1(b), it may decide, before its expiry and on a case by case basis, to extend that time limit by a maximum of nine months.”;
    - (ii) the second subparagraph were omitted;
  - (c) in paragraph 3, for “In Member States where” there were substituted “Where”;
  - (d) paragraphs 4 and 5 were omitted; and
  - (e) in paragraph 6, for “Union law” there were substituted “retained EU law”.
9. Annex VI applies as if—
- (a) points (2) and (5) were omitted; and
  - (b) in point (6)(a), for “referred to in point (5)” there were substituted “published under point (5) as it applied before exit day”.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made in exercise of the powers in section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a) to (g) of that Act) arising from the withdrawal of the United Kingdom from the European Union.

Part 2 amends primary legislation, Part 3 amends subordinate legislation applying to Great Britain, and Part 4 amends Northern Ireland legislation, relating to electricity and gas.

Part 5 amends or revokes retained EU Regulations and Decisions relating to electricity and gas or, in the case of some of the revoked instruments, to energy more generally. Regulations (EC) No 714/2009 (“the Electricity Regulation”) and 715/2009 (“the Gas Regulation”), which are amended by Schedules 1 and 2, are also amended with effect from exit day by the Electricity and Gas (Powers to Make Subordinate Legislation) (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1286).

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.