
STATUTORY INSTRUMENTS

1996 No. 275

The Gas (Northern Ireland) Order 1996

PART II

GAS SUPPLY AND ASSOCIATED ACTIVITIES

Modification of licences

Modification by agreement

14.—(1) Subject to the following provisions of this Article, the Director may—

- (a) modify the conditions of a particular licence; or
- (b) modify the standard conditions of licences under sub-paragraph (a), (b) or (c) of Article 8(1).

(2) Where at any time the Director modifies under paragraph (1)(b) the standard conditions of licences under sub-paragraph (a), (b) or (c) of Article 8(1), he—

- (a) shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences under that sub-paragraph granted after that time; and
- (b) may make such incidental or consequential modifications as he considers necessary or expedient of any conditions of licences under that sub-paragraph granted before that time.

(3) Before making modifications under this Article, the Director shall give notice—

- (a) stating that he proposes to make the modifications and setting out their effect;
- (b) stating the reasons why he proposes to make the modifications; and
- (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(4) A notice under paragraph (3) shall be given—

- (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
- (b) by sending a copy of the notice to the holder of the licence or, as the case may be, the relevant licence holders and to the Department.

(5) If, within the time specified in the notice under paragraph (3), the Department directs the Director not to make any modification, the Director shall comply with the direction.

(6) The Director shall not make any modifications under paragraph (1)(a) unless—

- (a) the holder of the licence has consented to the modifications; and

(b) in the case of standard conditions of a licence, the Director is of the opinion that the modifications—

- (i) are requisite to meet the circumstances of the particular case; and
- (ii) are such that no other licence holder would be unduly disadvantaged in competing with other licence holders (including the holder of the licence).

(7) The Director shall not make any modifications under paragraph (1)(b) unless—

- (a) the percentage given by each of paragraphs (8) and (9) is not less than 90 per cent;
- (b) the percentage given by paragraph (8) is not less than 90 per cent and no relevant activities have been carried on by relevant licence holders; or
- (c) paragraph (10) applies.

(8) The percentage given by this paragraph is the fraction given by the following formula expressed as a percentage, namely—

$$\frac{C}{C + N}$$

where—

- C = the number of consenting holders;
- N = the number of non-consenting holders.

(9) The percentage given by this paragraph is the fraction given by the following formula expressed as a percentage, namely—

$$\frac{C}{C + N}$$

where—

- C = the volume of gas to which relevant activities carried on by consenting holders relate;
- N = the volume of gas to which relevant activities carried on by non-consenting holders relate, as estimated (in each case) by the Director on the basis of the information available to him.

(10) This paragraph applies where the Director is of the opinion—

- (a) that the effect of the standard conditions is such as to impose a burden affecting relevant licence holders in the carrying on of activities to which the modifications relate;
- (b) that the modifications would remove or reduce the burden without removing any necessary protection; and
- (c) that the modifications are such that no relevant licence holder would be unduly disadvantaged in competing with other relevant licence holders.

(11) Where at any time the Director modifies standard conditions under paragraph (2)(a) for the purposes of their incorporation in licences under sub-paragraph (a), (b) or (c) of Article 8(1) granted after that time, he shall publish the modifications in such manner as he considers appropriate.

(12) In this Article, in relation to modifications of standard conditions under paragraph (1)(b)—

- “consenting holder” means a relevant licence holder who has consented to the modifications;
- “non-consenting holder” means a relevant licence holder who has not so consented;
- “relevant activity” means an activity to which the modifications relate and which is carried on in the period of 12 months immediately preceding the making of the modifications;

“relevant licence holder” means a licence holder whose licence incorporates the standard conditions.

(13) The Department may by order substitute for the percentage for the time being specified in paragraph (7)(a) and (b) such other percentage as the Department thinks fit.

Modification references to Monopolies Commission

15.—(1) The Director may make to the Monopolies Commission a reference which is so framed as to require the Commission to investigate and report on the questions—

- (a) whether any matters which—
 - (i) relate to the carrying on of activities authorised or required by a particular licence; and
 - (ii) are specified in the reference, operate, or may be expected to operate, against the public interest; and
- (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the relevant conditions, that is to say, the conditions of the licence.

(2) The Director may make to the Monopolies Commission a reference which is so framed as to require the Commission to investigate and report on the questions—

- (a) whether any matters which—
 - (i) relate to the carrying on of activities authorised or required by licences under sub-paragraph (a), (b) or (c) of Article 8(1); and
 - (ii) are specified in the reference, operate, or may be expected to operate, against the public interest; and
- (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the relevant conditions, that is to say, the standard conditions of licences under that sub-paragraph.

(3) The Director may, at any time, by notice given to the Monopolies Commission vary a reference under this Article by adding to the matters specified in the reference or by excluding from the reference some or all of the matters so specified; and on receipt of any such notice the Commission shall give effect to the variation.

(4) The Director may specify in a reference under this Article, or a variation of such a reference, for the purpose of assisting the Monopolies Commission in carrying out the investigation on the reference—

- (a) any effects adverse to the public interest which, in his opinion, the matters specified in the reference or variation have or may be expected to have; and
- (b) any modifications of the relevant conditions by which, in his opinion, those effects could be remedied or prevented.

(5) As soon as practicable after making a reference under this Article or a variation of such a reference, the Director—

- (a) shall serve a copy of the reference or variation on the licence holder or, as the case may be, the relevant licence holders; and
- (b) shall publish particulars of the reference or variation in such manner as he considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it.

(6) The Director shall also send a copy of a reference under paragraph (2), or a variation of such a reference, to the Department; and if, before the end of the period of 28 days from the day on which the Department receives the copy of the reference or variation, the Department directs the Monopolies Commission not to proceed with the reference or, as the case may require, not to give effect to the variation, the Commission shall comply with the direction.

(7) It shall be the duty of the Director, for the purpose of assisting the Monopolies Commission in carrying out an investigation on a reference under this Article, to give to the Commission—

- (a) any information in his possession which relates to matters falling within the scope of the investigation and—
 - (i) is requested by the Commission for that purpose; or
 - (ii) is information which, in his opinion, it would be appropriate for that purpose to give to the Commission without any such request; and
- (b) any other assistance which the Commission may require, and which it is within his power to give, in relation to any such matters;

and the Commission, for the purpose of carrying out any such investigation, shall take account of any information given to them for that purpose under this paragraph.

(8) In determining for the purposes of this Article whether any particular matter operates, or may be expected to operate, against the public interest, the Monopolies Commission shall have regard to the matters as respects which duties are imposed on the Department and the Director by Article 5.

(9) Sections 70 (time limit for report on merger reference), 81 (procedure in carrying out investigations) and 85 (attendance of witnesses and production of documents) of the 1973 Act, Part II of Schedule 3 to that Act (performance of functions of the Monopolies Commission) and section 24 of the 1980 Act (modifications of provisions about performance of such functions) shall apply in relation to references under this Article as if—

- (a) the functions of the Commission in relation to those references were functions under the 1973 Act;
- (b) “merger reference” included a reference under this Article;
- (c) in the said section 70, references to the Secretary of State were references to the Director and the reference to three months were a reference to six months;
- (d) in paragraph 11 of the said Schedule 3, the reference to section 71 of the 1973 Act were a reference to paragraph (3) of this Article; and
- (e) paragraph 16(2) of that Schedule were omitted.

(10) In this Article and Articles 16 and 17—

“relevant conditions” has the meaning given by paragraph (1) or (2);

“relevant licence holder”—

- (a) in relation to a reference under paragraph (2), means the holder of a licence to which the reference relates;
- (b) in relation to modifications of relevant conditions within the meaning given by that paragraph, means the holder of a licence which incorporates the conditions.

Reports on modification references

16.—(1) In making a report on a reference under Article 15, the Monopolies Commission—

- (a) shall include in the report definite conclusions on the questions comprised in the reference together with such an account of their reasons for those conclusions as in their opinion is expedient for facilitating a proper understanding of those questions and of their conclusions;

- (b) where they conclude that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, shall specify in the report the effects adverse to the public interest which those matters have or may be expected to have; and
- (c) where they conclude that any adverse effects so specified could be remedied or prevented by modifications of the relevant conditions, shall specify in the report modifications by which those effects could be remedied or prevented.

(2) Where, on a reference under Article 15, the Monopolies Commission conclude that the licence holder or, as the case may be, any of the relevant licence holders is a party to an agreement to which the Restrictive Trade Practices Act 1976 applies, the Commission, in making their report on that reference, shall exclude from their consideration the question whether the provisions of that agreement, in so far as they are provisions by virtue of which it is an agreement to which that Act applies, operate, or may be expected to operate, against the public interest; and paragraph (1)(b) shall have effect subject to the provisions of this paragraph.

(3) Section 82 of the 1973 Act (general provisions as to reports) shall apply in relation to reports of the Monopolies Commission on references under Article 15 as it applies to reports of the Commission under that Act.

(4) A report of the Monopolies Commission on a reference under Article 15 shall be made to the Director.

(5) Subject to paragraph (7), the Director shall—

- (a) on receiving a report on a reference under Article 15(1), send a copy of it to the licence holder and to the Department; and
- (b) not less than 14 days from the day on which the Department receives that copy, publish the report in such manner as he considers appropriate for bringing the report to the attention of persons likely to be affected by it.

(6) Subject to paragraph (7), the Director shall—

- (a) on receiving a report on a reference under Article 15(2), send a copy of it to the Department; and
- (b) not less than 14 days from the day on which the Department receives that copy—
 - (i) send another copy to each relevant licence holder; and
 - (ii) not less than 24 hours after complying with head (i), publish the report in such manner as he considers appropriate for bringing the report to the attention of persons likely to be affected by it.

(7) If it appears to the Department that the publication of any matter in such a report would be against the public interest or the commercial interests of any person, the Department may, before the end of the period of 14 days mentioned in paragraph (5)(b) or (6)(b), direct the Director to exclude that matter from every copy of the report to be published or (as the case may be) sent and published under that sub-paragraph.

Modification following report

17.—(1) Where a report of the Monopolies Commission on a reference under Article 15—

- (a) includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest;
- (b) specifies effects adverse to the public interest which those matters have or may be expected to have;
- (c) includes conclusions to the effect that those effects could be remedied or prevented by modifications of the relevant conditions; and

(d) specifies modifications by which those effects could be remedied or prevented, the Director shall, subject to the following provisions of this Article, make such modifications of the relevant conditions as appear to him requisite for the purpose of remedying or preventing the adverse effects specified in the report.

(2) Where at any time the Director modifies under paragraph (1) the standard conditions of licences under sub-paragraph (a), (b) or (c) of Article 8(1), he—

(a) shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences under that sub-paragraph granted after that time; and

(b) may make such incidental or consequential modifications as he considers necessary or expedient of any conditions of licences under that sub-paragraph granted before that time, and the above reference to paragraph (1) is a reference to that paragraph as it applies in relation to a report on a reference under Article 15(2).

(3) Before making modifications under this Article, the Director shall have regard to the modifications specified in the report.

(4) Before making modifications under this Article, the Director shall give notice—

(a) stating that he proposes to make the modifications and setting out their effect;

(b) stating the reasons why he proposes to make the modifications; and

(c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(5) A notice under paragraph (4) shall be given—

(a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the making of the modifications; and

(b) by serving a copy of the notice on the licence holder or, as the case may be, the relevant licence holders.

(6) Where at any time the Director modifies standard conditions under paragraph (2)(a) for the purposes of their incorporation in licences under sub-paragraph (a), (b) or (c) of Article 8(1) granted after that time, he shall publish the modifications in such manner as he considers appropriate.

Modification by order under other statutory provisions

18.—(1) Where in the circumstances mentioned in paragraph (3) the Secretary of State by order exercises any of the powers specified in—

(a) Parts I and II of Schedule 8 to the 1973 Act; or

(b) section 10(2)(a) of the 1980 Act,

the order may also provide for the modification of—

(i) the conditions of a particular licence; or

(ii) the standard conditions of licences under sub-paragraph (a), (b) or (c) of Article 8(1),

to such extent as may appear to him to be requisite or expedient for the purpose of giving effect to or of taking account of any provision made by the order.

(2) Where at any time the Secretary of State modifies under paragraph (1)(ii) the standard conditions of licences under sub-paragraph (a), (b) or (c) of Article 8(1), he—

- (a) shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences under that sub-paragraph granted after that time; and
 - (b) may, after consultation with the Director, make such incidental or consequential modifications as he considers necessary or expedient of any conditions of licences under that sub-paragraph granted before that time.
- (3) Paragraph (1) shall have effect where—
- (a) the circumstances are as mentioned in section 56(1) of the 1973 Act (order on report on monopoly reference) and the monopoly situation exists in relation to the carrying on of activities authorised or required by a licence;
 - (b) the circumstances are as mentioned in section 73(1) of that Act (order on report on merger reference) and at least one of the two or more enterprises which ceased, or (in the application of that provision as it has effect by virtue of section 75(4)(e) of that Act) which would cease, to be distinct enterprises was or, as the case may be, is engaged in the carrying on of activities authorised or required by a licence; or
 - (c) the circumstances are as mentioned in section 10(1) of the 1980 Act (order on report on competition reference) and the anti-competitive practice relates to the carrying on of activities authorised or required by a licence.
- (4) Where at any time the Secretary of State modifies standard conditions under paragraph (2)(a) for the purposes of their incorporation in licences under sub-paragraph (a), (b) or (c) of Article 8(1) granted after that time, he shall publish the modifications in such manner as he considers appropriate.
- (5) In this Article expressions which are also used in the 1973 Act or the 1980 Act have the same meanings as in that Act.