

2002 No. 291

GAS

**Gas Order 1996 (Amendment) Regulations
(Northern Ireland) 2002**

Made - - - - - 18th September 2002

Coming into operation 16th October 2002

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

**PART I
INTRODUCTORY**

Citation and commencement

1. These Regulations may be cited as the Gas Order 1996 (Amendment) Regulations (Northern Ireland) 2002 and shall come into operation on 16th October 2002.

Interpretation

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

(2) In these Regulations “the 1996 Order” means the Gas (Northern Ireland) Order 1996(d).

**PART II
AMENDMENTS TO THE GAS (NORTHERN IRELAND)
ORDER 1996**

Amendments

3. Part II of the 1996 Order shall be amended as provided in this Part.

(a) 1972 c. 68
(b) S.I. 2000/734
(c) 1954 c. 33 (N.I.)
(d) S.I. 1996/275 (N.I. 2)

Interpretation

4. In Article 3(1), after the definition of “the 1980 Act” there shall be inserted the following definition:

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

Time limits for exclusive licences

5.—(1) After Article 9(1) there shall be inserted the following paragraph –

“(1A) The period specified in a licence under paragraph (1) shall expire not later than the tenth anniversary of the grant of the licence.”.

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

(3) For Article 9(7) there shall be substituted –

“(7) The grantor may, with the consent of the holder of a licence conferring exclusive authority to carry on designated activities, modify the licence –

- (a) so as to substitute for the specified period such longer period as the grantor may determine;
- (b) so as to add to those activities which are designated activities for the purposes of this Article such other activities as the grantor may determine.

(7A) The grantor may not under paragraph (7)(a) substitute a period expiring after the tenth anniversary of the grant of the licence unless he is satisfied that it is necessary or expedient to do so in the interests of the efficient operation of the designated activities.”.

Limitation of rights under exclusive licences

6. After Article 9 there shall be inserted –

“Limitation of rights under exclusive licences

9A. The prohibition in Article 9(3) shall not apply to the grant by the Department or the Director of a licence under Article 8(1)(c) authorising the holder to supply a customer described in Article 18(2) of the Directive where the gas is supplied and conveyed through a direct line.”.

Conditions of licences

7. After Article 10 there shall be inserted –

“Compliance with Community obligations

10A.—(1) Without prejudice to the generality of Article 10, a licence shall include such conditions as appear to the grantor to be necessary or expedient having regard to the requirements and prohibitions laid down in the Directive.

(2) The conditions referred to in paragraph (1) shall in particular –

- (a) require the licence holder to keep accounts in accordance with the requirements of Article 13 of the Directive and confer on the Department and the Director a right of access to his accounts for the purpose of ensuring compliance with those requirements;
- (b) in the case of a licence under Article 8(1)(a) or (c), require the holder to comply with the requirements for system access laid down by Article 16 of the Directive and to act in accordance with Articles 10 and 11 of the Directive;
- (c) in the case of a licence under Article 8(1)(a) or (b), require the holder to develop and publish the technical rules required by Article 5 of the Directive and to comply with Articles 7 and 8 of the Directive.

(3) For the purposes of paragraph (2)(b) the requirements for system access referred to in that sub-paragraph shall in particular include the requirements that –

- (a) access to the system in question be granted in accordance with objective, non-discriminatory and transparent criteria; and
 - (b) any terms and obligations (including as to pricing) for such access be published.
- (4) In including conditions in a licence under Article 10 and this Article, the grantor shall –
- (a) comply with the requirements of Article 3(1) of the Directive;
 - (b) ensure that, where these conditions permit a licence holder to refuse system access in accordance with Article 17 of the Directive, he gives reasons for that refusal as required by paragraph (5) of that Article;
 - (c) in the case of a licence under Article 8(1)(a) or (c) which confers on the holder exclusive authority to carry on designated activities (within the meaning of Article 9), comply with the requirements of Article 7(2) of the Directive;
 - (d) ensure that, where the licence authorises the carrying on of any activity, the construction or operation of any pipeline, facility or associated apparatus used in connection with that activity meets the specified criteria.
- (5) Where the Department or the Director refuses to grant to any person a licence or an extension of a licence, the Department or Director, as the case may be, shall by notice in writing –
- (a) inform the person making the application of the fact;
 - (b) give him the reasons for that refusal; and
 - (c) inform him of any right to challenge the refusal.
- (6) In this Article “specified criteria” means the criteria specified by the Department from time to time for the purposes of and in accordance with Article 4(2) of the Directive and published by it.”.

Restriction on powers to modify licences

8. After Article 18 there shall be inserted the following Article –

“Duties of the Director and Secretary of State in making modifications

18A. In exercising a power to modify a licence under Article 14, 17 or 18 the Director or the Secretary of State, as the case may be, shall have regard to the requirements and prohibitions laid down in the Directive.”.

Consent required for constructing major pipelines etc

9. After Article 38 there shall be inserted the following Article –

“Requirements for major pipelines etc

38A.—(1) Any grant of a consent under –

- (a) Article 35 in relation to the construction of a major pipeline; or
- (b) Article 37 in relation to the construction of a gas storage facility,

shall be made subject to such conditions as appear to the Director to be necessary or expedient to ensure that the pipeline or facility, as the case may be, meets the specified criteria.

(2) Any direction given under Article 36 in relation to the modification of a pipeline shall include such requirements as appear to the Director to be necessary or expedient to ensure that the modifications meet the specified criteria.

(3) Any direction given under Article 37 in relation to an increase in the capacity of a gas storage facility shall include such requirements as appear to the Director to be necessary or expedient to ensure that the facility meets the specified criteria.

(4) Where the Director refuses to grant an application for a consent under Article 35 or 37 or a direction under Article 36 or 38 the Director shall by notice in writing –

- (a) inform the person making the application of the fact;

- (b) give him the reasons for that refusal; and
- (c) inform him of any right to challenge the refusal.

(5) In this Article “specified criteria” means the criteria specified by the Department from time to time for the purposes of and in accordance with Article 4(2) of the Directive and published by it.”.

PART III

CONDITIONS FOR EXISTING LICENCES

Existing licences

10.—(1) The Department after consultation with the Director, shall –

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

any licence granted before the coming into operation of these Regulations (“an existing licence”) as the Department or the Director, as the case may be, considers necessary or expedient having regard to the requirements and prohibitions laid down by the Directive.

(2) Modifications to an existing licence under paragraph (1) shall in particular –

- (a) in the case of a licence under Article 8(1)(a) or (c) of the 1996 Order which confers on the holder exclusive authority to carry on designated activities, provide for the period specified in the licence under Article 9(1) of the 1996 Order to end on the tenth anniversary of the date on which exclusive authority was first granted in that licence unless paragraph (3) applies;
- (b) without prejudice to sub-paragraph (a) enable any other holder of a licence to carry on any activity authorised by it for the purposes of Article 9A;
- (c) ensure that any pipeline, facility or associated equipment constructed or operated for the purposes of the licence after the date these Regulations come into operation meet the specified criteria.

(3) Where the Department or Director, as the case may be, is satisfied that it is necessary or expedient to do so in the interests of the efficient operation of any designated activity, it may instead of modifying the licence so that it ends on the date provided under and in accordance with paragraph (2)(a) provide for the period specified in the licence under Article 9(1) to end on such later date as may be determined.

(4) A notice under paragraph (1) may in particular –

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

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

(5) Article 10A(2) to (6) of the 1996 Order shall apply in relation to the modification or revocation of the conditions of, and the inclusion of any new conditions in, an existing licence under this regulation as it applies to the inclusion of any conditions in any other licence under that Article.

(6) Subject to Article 18A of the 1996 Order, modifications made to a licence under this regulation are without prejudice to the power of the Director or the Secretary of State to further modify that licence in accordance with Article 14, 17 or 18 of that Order.

Duties of Department and Director

11. Article 5 of the 1996 Order shall apply in relation to the exercise by the Department and the Director of any functions under this Part as it applies to the exercise of their functions under Part II of that Order.

Interpretation of Part III

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

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 18th September 2002.

(L.S.)

James McKeown

A Senior Officer of the Department of Enterprise, Trade and Investment

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations inter alia amend the Gas (Northern Ireland) Order 1996 (“the 1996 Order”) to ensure that it conforms with the requirements of Directive 98/30/EC of the European Parliament and of the Council concerning common rules for the internal market in natural gas (O.J. No L204, 21/07/1998, p 0001-0012) (“the Directive”).

Part I contains certain introductory provisions.

Part II amends the 1996 Order, as follows –

- (a) Regulation 4 inserts a definition of the Directive in Part II of the 1996 Order;
- (b) Regulations 5 and 6 amend the Order to ensure consistency with the Directive as regards exclusive rights to carry on certain activities conferred by licence by:
 - (i) inserting a new Article 9(1A) so as to automatically limit any exclusivity granted to a period of ten years; but
 - (ii) inserting a new Article 9(7) and (7A) which allows for an extension of exclusivity by consent beyond the period of ten years where it is requisite or expedient to do so in the interests of the efficient operation of the activities in question;
 - (iii) inserting a new Article 9A which allows for the grant of a licence authorising supply to certain customers through a direct line even though such supply would otherwise contravene the exclusive rights given to another licence holder;
- (c) Regulation 7 inserts a new Article 10A requiring the inclusion of appropriate conditions in licences to ensure that the authorised activities comply with the requirements of the Directive;
- (d) Regulation 8 inserts a new Article 18A which provides that no condition of a licence shall be modified in a manner inconsistent with the Directive;
- (e) Regulation 9 inserts a new Article 38A which provides that consents or directions granted under Articles 35 to 38 are only granted where the specified criteria are met, and provides procedural safeguards for the applicant who is refused such a consent or direction.

Part III provides for the modification of licences already issued under the 1996 Order to ensure that they comply with the provisions of the Directive (Regulation 10). It also requires the Department and the Director to comply with their general duties as set out in Article 5 of the 1996 Order in exercising their functions under that Part of the Regulations (Regulation 11).

£2.00

Published by The Stationery Office Limited

Printed in the UK by The
Stationery Office Limited
under the authority and
superintendence of Carol
Tullo, Controller of
Her Majesty’s Stationery
Office being the Government
Printer for Northern Ireland and
the Officer appointed to print the
Acts of the Northern Ireland Assembly
Dd. N641. C2. 9/02. Gp. 130. 14567.

ISBN 0-337-94358-3

