

**EXPLANATORY MEMORANDUM TO**

**GAS (APPLICATIONS FOR LICENCES AND EXTENSIONS)  
(AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2010**

**SR No. 326**

**1. INTRODUCTION**

- 1.1 This Explanatory Memorandum has been prepared by the Department of Enterprise, Trade and Investment (“the Department”) to accompany the above Statutory Rule which is to be laid before the Northern Ireland Assembly. The Explanatory Memorandum is designed to assist the reader in understanding the Regulations. It does not form part of the Regulations.
- 1.2 The Gas (Applications for Licences and Extensions) (Amendment) Regulations (Northern Ireland) 2010 (“the Regulations”) is made under Article 8(3) of the Gas (Northern Ireland) Order 1996 and is subject to negative resolution procedure.

**2. PURPOSE**

- 2.1 The Statutory Rule will introduce changes to the Northern Ireland natural gas licensing application procedure by amending the Gas (Applications for Licences and Extensions) Regulations (Northern Ireland) 1996 to ensure compliance with the EU Services Directive 2006/123/EC.

**3. BACKGROUND**

- 3.1 The Regulations amend the Gas (Applications for Licences and Extensions) Regulations (Northern Ireland) 1996 (“the 1996 Regulations”) to conform with Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (‘the Services Directive’).
- 3.2 The Services Directive came into force on 23 December 2009 and aims to remove barriers to competition for Member States who wish to provide a service which would extend beyond their national borders, while at the same time increasing transparency and information for consumers, therefore providing consumers with a wider choice and potential for increased standard of services at possible lower prices. The full text of the Services Directive can be accessed at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:376:0036:0068:EN:PDF>

- 3.3 The Services Directive contains a provision in Article 16(2), Freedom to Provide Services, whereby Member States may not restrict the freedom to provide services in

the case of a provider established in another Member State by imposing an obligation on the provider to have an establishment in their territory.

- 3.4 The 1996 Regulations were set in place to provide a structured and regulated system for natural gas companies wishing to apply for a licence to operate within Northern Ireland. Schedule 1 of the 1996 Regulations state that a company wishing to apply for a gas licence to operate in Northern Ireland must provide a contact address of a person or persons resident in Northern Ireland who is authorised to accept service of any notices or processes required to be served on the company, and to whom any correspondence would be directed. This contact address was solely required for the duration of the licence application process.
- 3.5 Therefore the amendment brings the Regulations into line with the Services Directive, specifically to give effect to Article 16(2)(a) in regard to the removal of barriers to competition for Member States to provide a service within Northern Ireland.

#### **4. CONSULTATION**

##### **Northern Ireland Consultation**

- 4.1 In July 2010, the Department published a consultation paper (“the Consultation Paper”) seeking views and comments on the proposed amendment to the 1996 Regulations, requesting that these be sent to the Department on or before 7 September 2010. The Consultation Paper, and its annexes, which included a draft set of Regulations, can be accessed at:

[http://www.detini.gov.uk/eu\\_services\\_directive\\_and\\_proposed\\_amendment\\_to\\_gas\\_applications\\_for\\_licences\\_and\\_extensions\\_regulations\\_1996.pdf](http://www.detini.gov.uk/eu_services_directive_and_proposed_amendment_to_gas_applications_for_licences_and_extensions_regulations_1996.pdf)

- 4.2 The Department will publish a decision note in reply to responses to the Consultation Paper on its website, which can be accessed at:

[www.energy.detini.gov.uk](http://www.energy.detini.gov.uk)

##### **UK Government Consultation**

- 4.3 The Department of Business, Innovation and Skills consulted formally on its proposals for implementing the Services Directive over the period November 2007 to February 2008. The Government Response analysing the consultation was published in June 2008. Both documents are available on the Department for Business, Innovation and Skills (BIS) website (<http://www.bis.gov.uk/policies/europe/eu-services-directive>).
- 4.4 Additionally, the Department of Business, Innovation and Skills made the draft text of the Regulations available for comment in May to June 2009.

## **5. EQUALITY IMPACT**

- 5.1 The Regulations have been screened for compliance with Section 75 of the Northern Ireland Act 1998. The Regulations should provide a structured, regulated and non-discriminatory system for natural gas companies wishing to apply for a licence to operate within Northern Ireland and the amendment of the 1996 Regulations should ultimately remove any potential constraints on the application process, therefore helping to bring benefits and potentially more competition to the natural gas industry in Northern Ireland. It was therefore found that a full EQIA was not considered necessary. The completed equality screening form is attached at **Annex A**.

## **6. REGULATORY IMPACT**

- 6.1 The Department published its draft regulatory impact assessment together with the Consultation Paper. The Department's views as regards implementation of the Services Directive in Northern Ireland have not changed since the publication of the draft regulatory impact assessment and, consequently, the Department has adopted the regulatory impact assessment in the form of the published draft (attached at **Annex B**).
- 6.2 The implementation in Northern Ireland of the Regulations will remove the requirement for a natural gas company applying for a licence to operate in Northern Ireland to provide a Northern Ireland address for the duration of the application process. This will bring the current Regulations into line with the Services Directive.
- 6.3 If Northern Ireland does not ensure full implementation of the Services Directive then it could potentially be left open to infraction proceedings, the result of which could involve a proportionate financial fine. Therefore this option has not been carried forward. The second option, of taking forward the proposed amendment to ensure full transposition of the Services Directive, would mean that Northern Ireland would be fully compliant with EC law and would avoid confusion for natural gas licence applicants applying to operate in Northern Ireland.

## **7. FINANCIAL IMPLICATIONS**

- 7.1 The cost estimates of compliance with the Directive, and implementation of the Regulations, are highlighted in the Department's regulatory impact assessment, attached at **Annex B**.

## **8. SECTION 24 OF THE NORTHERN IRELAND ACT 1998**

- 8.1 These Regulations do not contravene section 24 of the Northern Ireland Act 1998.

## **9. EU IMPLICATIONS**

- 9.1 There are no negative implications for the EU or its Member States by the introduction of the Regulations. Instead the Regulations will have a positive effect by making it

easier for natural gas companies based in other Member States to apply for a licence to operate within Northern Ireland.

## **10. PARITY OR REPLICATORY MEASURE**

- 10.1 The Department of Business, Innovation and Skills (BIS) are the lead Department on the implementation of the Services Directive into the UK. BIS made the Provision of Services Regulations 2009 which came into force on 28 December 2009. The Provision of Services Regulations 2009 sets out rules relating to the provision of services by transposing the Services Directive and applies to all of the United Kingdom.
- 10.2 There are four main elements to the overarching UK legislation, namely: the removal of legislative and administrative restrictions on the provision of services; the creation of an online facility through which service providers can apply remotely and electronically for necessary licences; enhanced cooperation between regulators in different Member States; and measures designed to enhance the quality of service provision such as greater access to information on providers and their services.
- 10.3 The Northern Ireland legislation is an addendum to the UK Provision of Services Regulations 2009 and relates specifically to the Northern Ireland gas licence application process giving effect to the Services Directive in regard to the removal of legislative and administrative restrictions on the provision of services within the Northern Ireland natural gas industry.

## **11. ADDITIONAL INFORMATION**

### **Commentary on Articles**

- 11.1 Regulation 3 amends paragraphs 4 and 8 of Schedule 1 of the 1996 Regulations, by enabling an applicant for a natural gas conveyance, storage or supply licence to nominate persons outside Northern Ireland to accept correspondence or enquiries concerning the application; and where the applicant is a body corporate, to accept services of any notices or processes required to be served on the applicant in connection with the application.
- 11.2 The Department for Business, Innovation and Skills compiled complete transposition notes when the requirements of the Directive were transposed in the UK Provision of Services Regulations 2009. Therefore, it has been deemed unnecessary to replicate the transposition notes for the Directive. Text for the transposition notes of the Directive can be accessed at:

[http://www.opsi.gov.uk/si/si2009/em/uksiem\\_20092999\\_en.pdf](http://www.opsi.gov.uk/si/si2009/em/uksiem_20092999_en.pdf)

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## **12. COMMENCEMENT**

12.1 The Regulations shall come into force on 30 September 2010.

**ENERGY DIVISION  
DEPARTMENT OF ENTERPRISE, TRADE AND INVESTMENT  
September 2010**

## DETI POLICY & LEGISLATION SCREENING FORM

### Section 1

The Legal Background
<p>Under section 75 of the Northern Ireland Act 1998, the Department is required to have due regard to the need to promote equality of opportunity:</p> <ul style="list-style-type: none"><li>• between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;</li><li>• between men and women generally;</li><li>• between persons with a disability and persons without; and</li><li>• between persons with dependants and persons without.</li></ul> <p>Without prejudice to the obligations set out above, the Department is also required, <u>in carrying out its functions relating to Northern Ireland</u>, to have regard to the desirability of promoting good relations between persons of different religious beliefs, political opinion or racial group.</p>

- 1.1 This form is intended to assist you in your consideration of the new policy or legislation in question to record the outcome in respect of these statutory equality considerations. We have a legal obligation to maintain an accurate audit trail of equality considerations.
- 1.2 The screening procedure should result in:
- the policy/legislation being screened does not have any or a significant impact on equality of opportunity; or
  - the policy/legislation being screened has (or is likely to have) a significant impact on equality of opportunity. Policies falling into this category will need to be considered further and may need an Equality Impact Assessment.
- 1.3 **EQUALITY UNIT IS HAPPY TO ADVISE ON ANY ASPECT OF SECTION 75 AND OR THE SPECIFIC ISSUES RAISED IN THIS FORM AND ITS COMPLETION. THE FORM SHOULD BE SIGNED OFF BY YOUR GRADE 5 AS EQUALITY AND DIVERSITY STEERING GROUP MEMBER.**

## **Section 2 – Policy/Legislation to be Screened**

### **What do we mean by “policy”?**

- There is no specific guidance as to how the term “policy” should be defined beyond reference to the New Oxford English Dictionary definition: a course or principle of action adopted or proposed by a government. A balance needs to be struck on the one hand avoiding too great a level of abstraction and, on the other, consideration of micro-level policies. Both extremes will be likely to cause difficulties.
- We would certainly expect individual schemes, programmes or initiatives to be considered as elements of a policy.
- Legislation can be either primary or sub-ordinate and the OFMDFM guidance procedures indicate the need to have completed equality considerations at certain stages in the procedures.

#### **2.1 Title of policy/legislation to be screened:**

Proposed amendment to the Gas (Applications for Licences and Extensions) Regulations (Northern Ireland) 1996 (the ‘Gas Regulations’) to give effect to Article 16 (2)(a) concerning Directive 2006/123/EC of the European Parliament and of the of 12 December 2006 on services in the internal market Council (the ‘EU Services Directive’).

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#### **2.2 Brief description of policy/legislation to be screened:**

The EU Services Directive’s main aim is to set non-discriminatory rules for removing barriers to competition for services, including natural gas companies, choosing to operate in Northern Ireland. Currently the Gas Regulations state that a company seeking to apply for a gas licence in Northern Ireland should provide, for the sole purpose of the applications process, a contact address in Northern Ireland. Although provision of a contact address is only required for a temporary period i.e. for the duration of the application process, it is deemed that the Department could potentially be subject to infraction proceedings from the European Commission for non-compliance with the EU Services Directive. Therefore, to fully ensure compliance with the EU Services Directive, the Department proposes to amend the Gas Regulations in order to bring them into line with the Directive.

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2.3 Aims/objectives of policy/legislation to be screened:

The aim is to amend the Gas Regulations to ensure that territory restrictions which currently place limitations on companies applying for a gas licence in Northern Ireland are amended, removing barriers to competition for those companies from other Member States who choose to operate in Northern Ireland, thus further opening the natural gas market to competition.

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It is essential that **all** the aims/objectives of the policy be clearly and fully defined.

2.4 On whom will the policy/legislation impact?

The immediate impact of the legislation will be on natural gas licence applicants.

The legislation, as part of the move to a fully competitive gas market, which will ultimately bring additional benefits to all gas consumers in terms of choice of suppliers and service level standards.

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2.5 Who is responsible for (a) devising and (b) delivering the policy eg is it DETI, DTI or another Whitehall Department or EU? What is the relationship and have they considered this issue and any equality issues?

DETI is the responsible Department for implementation of energy policy and legislation in Northern Ireland. In NI the Authority for Utility Regulation (NIAUR) is responsible for dealing with gas licence applications.

The EU devised and introduced the policy through the EU Services Directive, for which compliance is a legal requirement in each Member State.

DETI will ensure via NIAUR that the policy resulting from the legislation is delivered.

DETI has also considered the equality issues.

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2.6 What linkages are there to other NI Departments/NDPBs in relation to this policy/legislation?

There is no impact for other Departments.

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2.7 What data are available to facilitate the screening of this policy/ legislation?

Natural gas was first available in Northern Ireland in 1996. Currently there are two natural gas network companies operating within Northern Ireland along with their supply companies and a number of other gas suppliers.

Currently there are around 137,000 natural gas customers in Northern Ireland. There are approximately 130,000 customers in the Greater Belfast licensed area (Phoenix), and *firmus energy* supply natural gas in the ten urban areas, for which they hold a licence, namely Londonderry, Coleraine, Limavady, Ballymoney, Ballymena, Antrim, Craigavon, Armagh, Banbridge and Newry and have around 7500 customer connections.

The gas market in the Greater Belfast licensed area was opened to supply competition in January 2007.

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**Section 3 – Screening Analysis**

1. You should not think of the “not known” column as the easy option to respond to any of the questions. In cases where there is no available evidence, you will need to take a pragmatic, common sense judgement as to whether the policy/legislation you are screening may have a particular/differential impact on any of the groups. Discussions with Equality and Diversity Unit, Statistics Research Branch and organisations representing the Section 75 Groups will be important and helpful at this stage.

**3.1 Is there any evidence of higher or lower participation or uptake by the following characteristics?**

	Yes	No	Not Known
Religious belief		√	
Political opinion		√	
Racial group		√	
Age		√	
Marital status		√	
Sexual orientation		√	
Sex		√	
Disability		√	
Dependency		√	

Please elaborate

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The Gas Regulations are technical in nature and impact on natural gas licence applicants. Therefore it is deemed that there will be no impact on any of the Section 75 Groups.

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Natural Gas is available to all consumers within the licence area regardless of their background.

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**3.2 Is there evidence that any of the following groups have different needs, experiences, issues and priorities in relation to this policy issue?**

	Yes	No	Not Known
Religious belief		√	
Political opinion		√	
Racial group		√	
Age		√	
Marital status		√	
Sexual orientation		√	

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Sex		√	
Disability		√	
Dependency		√	

Please elaborate

See 3.1

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**3.3 Have consultations with relevant groups, organisations or individuals indicated that policies of this type create problems specific to them?**

	Yes	No
<b>Religious belief</b>		√
<b>Political opinion</b>		√
<b>Racial group</b>		√
<b>Age</b>		√
<b>Marital status</b>		√
<b>Sexual orientation</b>		√
<b>Sex</b>		√
<b>Disability</b>		√
<b>Dependants</b>		√

Please elaborate

No consultation with these specific groups has taken place.

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**3.4 Is there an opportunity to better promote equality of opportunity or community relations by altering the policy, or by working with others, in Government, or in the larger community in the context of this policy?**

Yes      ~~No~~

**Please elaborate:**

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The actual impact of this amendment will ensure that companies in all EU Member States have an equal opportunity to compete in the Northern Ireland natural gas market without the restrictions of territory imposed on them.

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**3.5 If the answer to any of questions in 1 to 4 is yes please indicate whether you consider the policy may present a significant risk to DETI's obligation to have due regard to the need to promote equality of opportunity. You will need to consider whether the policy/legislation could be changed, better to promote equality of opportunity and/or be subject to a full EqIA.**

Yes                      **No**

**Please elaborate:**

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This policy is intended to promote equality of opportunity.

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**3.6 It may be that a policy/legislation has a differential/impact on a certain group as the policy has been developed to address an existing or historical inequality or disadvantage. If this is the case, please give details below:**

N/A

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Section 4

**EqIA Recommendation**

**4.1 Full EqIA procedures should be carried out on policies considered to have significant implications for equality of opportunity. In light of the above 3 sections please fill in the following grid in relation to the policy/legislation.**

	<b>Significant Impact</b>	<b>Moderate Impact</b>	<b>Low Impact</b>
Social Need.			√
Effect on people's daily lives.			√
Effect on economic, social and human rights.			√

**Please elaborate:**

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The introduction of this legislation will have no significant implications for equality of opportunity. All groups will have the opportunity to choose their gas supplier regardless of their economic or social standing in the community and this could improve their choice of gas supplier.

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4.2 What is the scale of expenditure incurred by the policy?

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It is deemed that there will be no expenditure incurred to the Department, the NI Authority for Utility Regulation or Northern Ireland natural gas consumers.

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4.3 Do you consider that this policy/legislation should be subject to a full EqIA? Please give reasons for your considerations.

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No – the legislation will simply bring the current legislation into line with the EU Services Directive.

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This legislation will apply equally and should bring benefit to all.

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4.4 What data are required in the future to ensure effective monitoring?

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None. These Regulations will amend existing legal obligations on the Department, NIAUR and the gas licence application process. Any additional monitoring in relation to equality issues is considered unnecessary.

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**Section 5**

2. **Disability Duties**

3. Under the Disability Discrimination Act 1995 (as amended by the Disability Discrimination (Northern Ireland) Order 2006), public authorities, when exercising their functions, are required to have due regard to the need:

- to promote positive attitudes towards disabled people; and
- to encourage participation by disabled people in public life.

5.1 Does this policy/legislation have any potential to contribute towards promoting positive attitudes towards disabled people or towards encouraging participation by disabled people in public life? If yes, please give brief details.

NO

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**Signed:** [Signed Grade 5]  
**EDSG Member**

**Division:** Director of Energy Division, Department of Enterprise, Trade & Investment

**Date:** 29<sup>th</sup> July 2010

## **REGULATORY IMPACT ASSESSMENT**

### **GAS (APPLICATIONS FOR LICENCES AND EXTENSIONS) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2010**

#### **1. Title of proposal**

The Gas (Applications for Licence and Extensions) (Amendment) Regulations (Northern Ireland) 2010

#### **2. Introduction**

**2.1** This draft Regulatory Impact Assessment supports the implementation in Northern Ireland of the EU Services Directive 2006/123 ('The Services Directive') which aims to remove barriers to competition for companies or other bodies wishing to provide a service which would extend beyond the national borders of the Member State in which they are established, while at the same time increasing transparency and information for consumers, therefore providing consumers with a wider choice and increased standard of services at lower prices.

**2.2** In particular Article 16 (2)(a) of the Services Directive requires that Member States may not restrict the freedom to provide services in the case of a provider established in another Member State. In particular it states restrictions cannot be imposed by placing an obligation on the provider to have an establishment in their territory.

**2.3** This Directive should not be confused with the Energy End Use Efficiency and Energy Services Directive 2006/32/EC.

**2.4** Schedule 1 of the Gas (Applications for Licence and Extensions) Regulations (Northern Ireland) 1996 ('The Gas Regulations') states that there is a requirement for a company wishing to apply for a gas licence in Northern Ireland to provide a Northern Ireland contact address for the duration of the application process. The current Regulations were established to provide a structured and regulated system for natural gas companies wishing to apply for a licence to operate within Northern Ireland. Although provision of a contact address is only required for a temporary period, i.e. for the duration of the application process, it is deemed that by not amending the Gas Regulations, the Department could potentially be subject to infraction proceedings from the EU Commission. Therefore, to fully ensure compliance with the EU Services

Directive, the Department proposes to amend the Gas Regulations in order to bring them into line with the Directive.

### **3. Purpose and intended effect**

#### **3.1. Objective**

**3.1.1.** The aim of this proposal is to ensure that legal provisions are in place to prevent an infringement of Regulation EC No. 2006/123 which relate to non-discriminatory rules for access conditions to natural gas companies, taking into account the specifics of nations and regional markets with a view to ensuring the proper functioning of the internal gas market.

#### **3.2. Background**

**3.2.1** Unlike the rest of the United Kingdom, Northern Ireland, because of unfavourable economics, did not have access to the supplies of natural gas until the 1990's. In 1992 as part of the restructuring and privatisation of the local electricity supply industry, Ballylumford Power Station was converted from oil to gas firing. This base load requirement provided the opportunity for the development of a commercially viable downstream natural gas industry in Northern Ireland.

**3.2.2** In September 1996, a licence was granted to Phoenix Natural Gas Ltd (PNG) for the staged development of the industrial, commercial and domestic gas markets in the Greater Belfast and Larne areas. There are currently around 130,000 customers connected to natural gas in the Phoenix licensed area.

**3.2.3** On 21 September 2001 the Northern Ireland Executive announced its support for the development of a multi-million pound gas pipeline project. The support was in the form of a grant package up to £38m, including an Irish Government contribution of £8.5m. The project involved construction by BGE Northern Ireland (BGE (NI)), a subsidiary of the state owned Republic of Ireland gas company, of two gas transmission pipelines. A gas pipeline from Dublin to Antrim (the South-North pipeline) was completed in October 2006, providing natural gas to Newry, Armagh, Banbridge, Craigavon and Antrim. This pipeline links with the first pipeline in the project, from near Carrickfergus to Londonderry (the North-West pipeline) which was completed in November



2004, and which supplies gas to Coolkeeragh power station and to Ballymena, Ballymoney, Coleraine, Limavady and Londonderry.

- 3.2.4** *firmus energy* are continuing with the roll-out of the natural gas distribution networks in the licence area served by both pipelines and has around 7,500 customers connected at Spring 2010.
- 3.2.5** On 1 January 2007 the natural gas supply market was fully opened in the Phoenix licence area of Greater Belfast and Larne.

### **3.3. Intended Effect**

- 3.3.1.** The intent of Article 16 of the Services Directive is for Member States to remove barriers to competition for natural gas companies operating in Northern Ireland.
- 3.3.2.** It is also the Department's intent to ensure that the Gas Regulations are fully in compliance with the EU Services Directive and to prevent potential infraction proceedings from the European Commission.

## **4. Risk Assessment**

As the objective is to meet the EU requirement to remove barriers to entry for competition within the natural gas industry, a risk assessment is appropriate.

### **4.1. Options**

- **Option 1 – do nothing**

Under EC law, Member States are obliged to implement Regulations of the European Council and European Parliament. If Northern Ireland does not fully transpose the EU Services Directive then the United Kingdom could potentially be open to infraction proceedings, the result of which would be a proportionate financial fine. This option is not carried forward.

- **Option 2 – implement Regulation**

The second option is to amend the Gas Regulations to remove the requirement to provide a contact address in Northern Ireland for the gas licence application process. This would mean that Northern Ireland

would be fully compliant with the EU Services Directive regarding removal of barriers to entry for businesses operating in all Member States.

## **5. Cost Benefit Analysis**

### **5.1. Benefits**

The main benefit of implementing the change to Schedule 1 of the Gas Regulations would be that Northern Ireland provisions would be in line with EU Services Directive requirements and therefore would not be subject to infraction proceedings, and consequently a proportionate financial fine.

### **5.2. Costs**

The amendment of the Gas Regulations to ensure compliance with the EU Services Directive will not create any additional costs for a company wishing to apply for a gas licence in Northern Ireland. There will also be no direct costs to the Department, the Northern Ireland Authority for Utility Regulation ("the Utility Regulator") or Northern Ireland consumers.

## **6. Concentration of Small Business: The Small Business Impact Test**

The amendment of the Gas Regulations should facilitate small businesses in providing easier access to a gas supply from a greater number of suppliers. The amendment will also facilitate the process for companies wishing to apply for a natural gas licence to operate in Northern Ireland and therefore encourage competition in the market.

## **7. Environmental Impact**

Natural gas is the cleanest fossil fuel and therefore the amendment of the Gas Regulations will facilitate and encourage the continued use of natural gas.

## **8. Enforcement and Sanctions**

Compliance with gas licence conditions is enforced by the Utility Regulator who has the power to impose financial penalties of up to 10% of the turnover of the licensees in the event of a breach.

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I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

**[Signed]**

**Minister for Enterprise, Trade and Investment**

**21 September 2010**