
STATUTORY RULES OF NORTHERN IRELAND

2013 No. 92

**The Gas and Electricity (Internal Markets)
Regulations (Northern Ireland) 2013**

PART III

AMENDMENT TO GAS (NORTHERN IRELAND) ORDER 1996

Exemptions for new infrastructure

30.—(1) After Article 39 insert—

“**39A.**—(1) A person who is or expects to be the holder of a licence may apply for any major pipeline (within the meaning of Article 35), any gas storage facility or any LNG facility whose operation is authorised by the licence and any modification of such a pipeline or facility to be exempt from a relevant requirement if paragraph (3) applies in relation to it.

(2) For the purposes of paragraph (1) a relevant requirement is—

- (a) in the case of an applicant who conveys or intends to convey gas through a gas transmission pipeline, and who holds or expects to hold a licence under Article 8(1)(a), the requirement under Article 8B that he be certified at all times when he acts under the authority of the licence;
- (b) any condition specified in an order under Article 7(1)(c) or included in a licence under Article 10A insofar as it relates to compliance with Articles 32, 33 or 34 of the Directive; and
- (c) any conditions specified in an order under Article 7(1)(c) or included in a licence under Article 10A insofar as it relates to the determination of tariffs or methods for the determination of tariffs for connection and access to pipelines or facilities or the provision of balancing services,

insofar as the requirement relates to any pipeline or facility to which an application under paragraph (1) relates.

(3) This Article applies to any pipeline or facility which is not yet operational and to any modification of a pipeline or facility which provides for a significant increase in capacity or is intended to enable the development of new sources of gas supply and which is not yet operational.

(4) The Authority must send to the European Commission a copy of any application under paragraph (1) as soon as is reasonably practicable following its receipt.

(5) On receipt of an application under paragraph (1), the Authority must decide whether or not to grant the exemption to which it relates after taking into account the matters specified in Article 36(1) of the Directive.

(6) An exemption under this Article must, if granted, be in writing and on the following terms, that is to say—

- (a) terms specifying the period of the exemption or specifying how that period is to be determined;
- (b) terms on whether the exemption applies to all of the pipeline or facility to which the application relates or only a specified part thereof;
- (c) terms requiring charges to be imposed on users of the pipeline or facility and for specifying or determining the amount of those charges;
- (d) terms which ensure that the exemption is not detrimental to competition or the effective functioning of the market in gas in Northern Ireland or to the achievement of the objectives or the discharge of the general duties of the Authority and the Department under Part III of the Energy (Northern Ireland) Order 2003; and
- (e) such terms regarding non discriminatory access to the pipeline or facility in question as the Authority considers appropriate.

(7) An exemption given in accordance with this Article may apply to all the capacity of the pipeline or facility concerned or to part of the capacity only, regardless of the extent of the exemption applied for; but this is subject to paragraph (8).

(8) In respect of a pipeline or facility which is or is to be modified to provide for a significant increase in its capacity, an exemption by virtue of this Article may only be given in relation to that increase in its capacity or part of that increase in its capacity.

(9) Subject to the following provisions, an exemption may not be given by virtue of this Article more than once in respect of the same pipeline or facility.

(10) Paragraph (9) does not prevent a further exemption being given in respect of any pipeline or facility or modification if that exemption has been revoked under Article 39B.

(11) Paragraph (9) does not prevent a further exemption being given in respect of a pipeline or facility if—

- (a) it is to be modified so as to provide for a significant increase in its capacity or to enable development of a new source of gas supply;
- (b) the exemption has effect only in relation to that modification; and
- (c) no previous exemption has been given in respect of that modification.

(12) Where the Authority makes a decision to refuse or give an exemption in accordance with this Article, it must publish that decision together with the reasons for its decision in such manner as it considers appropriate.

39B. If the Authority gives, or refuses to give, an exemption in accordance with Article 39A, it must send the following to the European Commission as soon as is reasonably practicable—

- (a) if the exemption was given, a copy of the exemption and of the terms on which it was given;
- (b) the Authority's reason for giving the exemption or not giving it, which must address each of the matters listed in Article 36(1) of the Directive;
- (c) any supporting information held by the Authority which is relevant to the application for an exemption, including in particular any—
 - (i) relevant financial information; and
 - (ii) analysis of the likely effects of the exemption on competition and on the effective functioning of the market for natural gas in Northern Ireland;
- (d) if the exemption was given, the basis on which the Authority determined—
 - (i) the period of the exemption or how that period is to be determined; and

- (ii) the capacity to which the exemption relates;
 - (e) any contribution by the pipeline or facility to the diversification of the supply of gas; and
 - (f) any other information requested by the European Commission.
- (2) If, in accordance with Article 36(9) of the Directive, the European Commission requires the Authority to revoke an exemption given in accordance with Article 39A, or to modify the terms on which it is given, the Authority must—
- (a) comply with that request within the period of one month beginning with the date on which it receives the request; and
 - (b) inform the European Commission when it has done so.
- (3) The Authority must revoke an exemption given in accordance with Article 39A in respect of a pipeline or facility—
- (a) if its construction or, as the case may be, the making of the modification to which the exemption relates has not been started within the 2 years beginning with the relevant date; or
 - (b) if it, or (as the case may be) the modification to which the exemption relates, is not operational within 5 years beginning on the relevant date.
- (4) In paragraph (3) “relevant date” means—
- (a) if the European Commission notified the Authority that it approved the exemption and terms as copied to it under paragraph (1), the date of that notification;
 - (b) if, in accordance with Article 36(9) of the Directive, the European Commission required the Authority to modify the terms, the date of that requirement; or
 - (c) otherwise the date 4 months after the Authority sent the Commission a copy of the exemption and terms under paragraph (1).
- (5) The Authority may, at any other time, revoke an exemption given in accordance with Article 39A or modify the terms on which such an exemption is given, in respect of a pipeline, facility or modification—
- (a) in accordance with the provisions of the exemption; or
 - (b) by giving the owner of the pipeline or facility in question a notice of a revocation at least 4 months before the revocation takes effect.”.