

2020 No. 279

GAS

The Gas (Internal Markets) Regulations (Northern Ireland) 2020

Made - - - - *24th November 2020*

Coming into operation - *16th December 2020*

The Department for the Economy is a Northern Ireland Department designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to energy and energy sources.

The Department for the Economy in exercise of the powers conferred by section 2(2) of that Act makes the following Regulations.

Citation and commencement

1. These Regulations may be cited as the Gas (Internal Markets) Regulations (Northern Ireland) 2020, and come into operation on 16th December 2020.

Interpretation

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

Amendment of the Gas (Northern Ireland) Order 1996

3. The Gas (Northern Ireland) Order 1996^(d) is amended as provided in regulations 4 to 12.

(a) The European Communities (Designation) Order 2010 (S.I. 2010/761), article 7. By virtue of section 2(5) of the European Communities Act 1972, references in section 2(2) of that Act to a government department include a department of the Government of Northern Ireland.

(b) 1972 c. 68. The European Communities Act 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) with effect from exit day, but saved with modifications until IP completion day by section 1A of that Act (as inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c. 1)). Section 2(2) of the European Communities Act 1972 was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7). Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 and S.I. 2007/1388

(c) 1954 c. 33 (N.I.).

(d) S.I.1996/275 (N.I.2).

Interpretation of Part II

4.—(1) In Article 3(1)—

- (a) after the definition of “the 2011 Regulations” insert—
 - ““the Authority” means the Northern Ireland Authority for Utility Regulation(a);”;
- (b) for the definition of “the Directive” substitute—
 - ““the Directive” means European Parliament and Council Directive 2009/73/EC concerning common rules for the internal market in natural gas as amended by European Parliament and Council Directive 2019/692;”;
- (c) in the definition of “gas storage facility”—
 - (i) omit the words “(other than a facility in, under or over the territorial sea adjacent to Northern Ireland)”; and
 - (ii) from the words from “not being” to the end of the definition substitute—
 - “but does not include—
 - (a) a pipe or other conduit for the conveyance of gas; or
 - (b) a facility that is an LNG facility;”.

(2) In Article 7 for “Director” in each place where it occurs in paragraphs (1) and (4) substitute “Authority”.

(3) In Article 30(2)—

- (a) for “Director” where it first occurs substitute “Authority”;
- (b) for “the Director may by notice signed by him” substitute “the Authority may by notice”; and
- (c) in sub-paragraphs (a) and (b) for “Director” in each place where it occurs substitute “Authority”.

(4) In Article 30(6) for “Director” substitute “Authority”.

(5) In Article 35—

- (a) for “Director” in the heading and in each place where it occurs in the following provisions substitute “Authority”, that is to say in—
 - (i) paragraph (1);
 - (ii) paragraphs (3) to (6);
 - (iii) paragraph (8);
 - (iv) paragraphs (10) to (12); and
 - (v) paragraph 14; and
- (b) in paragraph (7) for “him, the Director” substitute “it, the Authority”.

(6) In article 36—

- (a) for “Director” in each place where it occurs in the following provisions substitute “Authority”, that is to say in—
 - (i) paragraph (1);
 - (ii) paragraph (2); and
 - (iii) paragraph (7); and

(a) Formerly the Northern Ireland Authority for Energy Regulation see Article 3 of the Water and Sewerage Services (Northern Ireland) Order 2006

(b) for paragraph (3) substitute—

“(3) Where the Authority proposes to give directions under paragraph (1), it shall be its duty before doing so to give to the applicant particulars of the modifications which it proposes to specify in the directions.”.

(7) In Article 37—

(a) for “Director” in the heading and in each place where it occurs in the following provisions substitute “Authority”, that is to say in—

(i) paragraph (1);

(ii) paragraphs (3) to (5);

(iii) paragraph (7);

(iv) paragraphs (9) to (11); and

(v) paragraph 13; and

(b) in paragraph (6) for “him, the Director” substitute “it, the Authority”.

(8) In Article 38(1) for “Director” in each place where it occurs substitute “Authority”.

5. In the following provisions for “pipeline” in each place where it occurs substitute “pipe-line”, that is to say in—

(a) Article 7A(2);

(b) Article 7D(1) in the definition of “distribution system”;

(c) Article 8 paragraphs (4A) and (7C);

(d) Article 10A(5A);

(e) Article 38A paragraphs (1), (2) and (6);

(f) Article 39A paragraphs (1) to (3) and (6) to (11); and

(g) Article 39B paragraphs (1), (3) and (5).

6. In the following provisions for “pipelines” in each place where it occurs substitute “pipe-lines”, that is to say in—

(a) Article 38A in the heading; and

(b) Article 39A(2).

Licence conditions

7.—(1) Article 10A is amended as provided in paragraphs (2) and (3).

(2) In paragraph (3) after sub-paragraph (g) insert—

“(ga) to comply with the requirements for access to upstream pipeline networks laid down by Article 34(1) of the Directive in a manner which meets the requirements laid down by paragraph (2) of that Article;”.

(3) In paragraph (10)(c) for “system access” substitute “access to LNG facilities”.

Consent of Authority for construction of gas storage facility

8. In Article 37 at the end add—

“(14) In this Article any reference to a “gas storage facility” does not include such a facility (wholly or in part) in, under or over the territorial sea adjacent to Northern Ireland.”.

Increase of capacity of gas storage facility

9. In Article 38 at the end add—

“(3) In this Article any reference to a “gas storage facility” does not include such a facility (wholly or in part) in, under or over the territorial sea adjacent to Northern Ireland.”.

Requirements for major pipe-lines etc

- 10.**—(1) Article 38A is amended as provided for in paragraphs (2) to (6).
- (2) In paragraph (1)—
- (a) omit the “or” after sub-paragraph (a);
 - (b) at the end of sub-paragraph (b) for the comma substitute “; or”;
 - (c) after sub-paragraph (b) insert—
 - “(c) Article 37A in relation to the construction of an LNG facility,”; and
 - (d) for “the Authority” substitute “the Authority or the Department (as the case may be).
- (3) In paragraph (3) for “Article 37” substitute “Article 38” and after “shall not be granted unless the facility” insert “as intended to be modified”.
- (4) After paragraph (3) insert—
 - “(3A) Any direction under Article 38B in relation to an increase in the capacity of an LNG facility shall not be given unless the facility as intended to be modified meets the published criteria, and may be given subject to such conditions as appear to the Authority to be necessary or expedient to ensure that it does so.”.
- (5) In paragraph (4) for “Article 36 or 38” substitute “Article 36, 38 or 38B,”.
- (6) After paragraph (4) insert—
 - “(4A) Where the Department refuses to grant an application for a consent under Article 37A it shall by notice in writing—
 - (a) inform the person making the application (“the applicant”) of the fact;
 - (b) give the applicant the reasons for that refusal; and
 - (c) inform the applicant of any right to challenge the refusal.”.

Duty to inform European Commission where certain applications refused

- 11.** After Article 38A(4A) (inserted by regulation 10) insert—
 - “(4B) Where the Authority or the Department refuses to grant an application mentioned in paragraph (4) or (4A), the Authority or (as the case may be) the Department shall inform the European Commission by notice in writing of the reasons for the refusal.”.

Consultation on pipe-line exemptions

- 12.** In Article 39A after paragraph (5) insert—
 - “(5A) Before taking a decision under paragraph (5), the Authority shall carry out such consultations as may be required by Article 36(3) of the Directive according to the particular circumstances of the case and may for the purposes of any such consultation as is mentioned in paragraph (3)(b) of that Article set a deadline of not more than three months for a response from the person consulted.”.

Amendment of the Energy (Northern Ireland) Order 2003

- 13.** The Energy (Northern Ireland) Order 2003(a) is amended as provided in regulations 14 to 16.

(a) S.I. 2003/419 (N.I. 6)

Interpretation

14. In Article 2(2) for the definition of “the Gas Directive” substitute—

““the Gas Directive” means European Parliament and Council Directive 2009/73/EC concerning common rules for the internal market in natural gas as amended by European Parliament and Council Directive 2019/692;”.

Powers and duties of the Authority

15. After Article 8(1) insert—

“(1A) The Authority may consult and co-operate with the Agency.”.

16.—(1) Article 8A is amended as provided for in paragraphs (2) and (3).

(2) After paragraph (1) insert—

“(1A) When carrying out its functions as designated regulatory authority for Northern Ireland, the Authority shall to the extent it considers necessary, consider whether there is a need to consult and co-operate with any person exercising functions in relation to gas which correspond to any of those of the Authority or the Department in a State to which Article 8(1)(c) applies.”.

(3) After paragraph (2) insert—

“(2A) In meeting its duty under paragraph (1) the Authority shall, wherever it thinks fit, co-operate and consult with the Agency or the designated regulatory authorities in Great Britain or the Member States in relation to cross border issues (within the meaning of the Gas Directive) with a view to ensuring that the purposes of the Gas Directive in relation to such issues are achieved.

(2B) In meeting its duty under paragraph (1A) the Authority shall, wherever it thinks fit, co-operate and consult with any person exercising, in relation to a pipe-line to which Article 8(1)(c) applies, functions which correspond to any of those of the Authority or the Department.”.

Amendment of the Energy Act 2008

17. Paragraph 5 of Schedule 1 to the Energy Act 2008(a) is repealed.

Revocation

18. Regulation 11 and the provisions inserted by that regulation in the Gas (Northern Ireland) Order 1996 shall cease to have effect on IP completion day.

19. Regulations 15 and 16 and the provisions inserted by those regulations in the Energy (Northern Ireland) Order 2003 shall cease to have effect on IP completion day.

Sealed with the Official Seal of the Department for the Economy on 24th November 2020.



Joe Reynolds
A senior officer of the
Department for the Economy

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations inter alia amend the Gas (Northern Ireland) Order 1996 (“the Gas Order”) and the Energy (Northern Ireland) Order 2003 (“the Energy Order”) to ensure that they conform with the requirements of European Parliament and Council Directive 2009/73/EC (“the principal Directive”) concerning common rules for the internal market in natural gas as amended by European Parliament and Council Directive 2019/692 (“the amending Directive”).

For this purpose the Regulations make the following changes.

Regulations 4(1)(b) and 14 amend the definitions of the principal Directive in both the Gas Order and the Energy Order to ensure that references to that Directive in both Orders include references to it as amended by the amending Directive.

Regulation 4(1)(c) amends the definition of “gas storage facility” to bring such facilities in the territorial sea adjacent to Northern Ireland within the power of the Northern Ireland Authority for Utility Regulation (“the Authority”) to grant storage licences in relation to them. Such licences can be granted subject to appropriate conditions to ensure that they are operated in accordance with the requirements of the principal Directive and amending Directive. However, regulations 8 and 9 amend the provisions of the Gas Order requiring the consent of the Authority for the construction of gas storage facilities, or for an increase in their capacity, to exclude such facilities in the territorial sea which continue to be licensed in this respect by the Oil and Gas Authority under the Energy Act 2008. Regulation 17 makes a consequential change to that Act.

Article 10A of the Gas Order requires the Authority to include in licences issued under that Order conditions which implement the requirements of the principal Directive. Regulation 7(2) amends this provision to include a requirement that conditions are included in a gas conveyance licence in respect of upstream pipeline networks to ensure that natural gas undertakings and eligible customers are able to obtain access to them.

Article 38A of the Gas Order ensures that the granting of consents by the Authority for the construction or modification of major pipe-lines and gas storage facilities comply with the requirements of the principal Directive. Regulation 10 amends this provision to include consents for the construction or modification of LNG facilities by the Department or the Authority as the case may be. Regulation 11 provides that the Department or the Authority as the case may be shall inform the European Commission of any refusal to grant a consent.

Article 39A of the Gas Order provides for a procedure whereby major pipe-lines and gas storage and LNG facilities may be exempted from certain requirements imposed by the principal Directive. Regulation 12 amends this provision to require the Authority to consult before granting an exemption, including in certain cases consultation with authorities in non-member States. The Authority may impose a time limit for such consultations.

Regulation 15 amends Article 8 of the Energy Order to expand the powers of the Authority to enable it to consult and co-operate with the Agency for the Cooperation of Energy Regulators of the European Union, and regulation 16 amends Article 8A of that Order to include new duties on the Authority to ensure that it exercises its powers of consultation and co-operation in accordance with the requirements of the principal Directive as amended by the amending Directive.

In addition to the foregoing, regulation 4(1)(a) includes in the Gas Order a definition of the Authority and regulation 4(2) to (8) replaces some outdated references to the former Director General of Gas for Northern Ireland whose functions are now exercised by the Authority. Regulations 5 and 6 replace erroneous references to “pipeline” and “pipelines” with “pipe-line” and “pipelines” respectively. Regulation 7(3) also makes a minor correction in provisions dealing with the licence conditions for access to LNG facilities to use that term instead of referring to system access.

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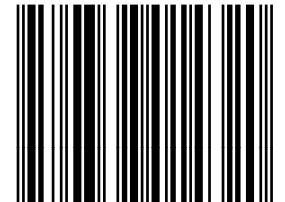
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