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DRAFT STATUTORY INSTRUMENTS

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**2019 No.**

**The Electricity and Gas etc. (Amendment  
etc.) (EU Exit) Regulations 2019**

**PART 4**

**Amendment of Northern Ireland legislation**

**The Electricity (Northern Ireland) Order 1992**

**84.** The Electricity (Northern Ireland) Order 1992<sup>(1)</sup> is amended as follows.

**85.** In Article 9 (exemptions from Article 8), in paragraph (3)(aa)—

- (a) for “the relevant requirements” substitute “relevant requirements”;
- (b) for “laid down by the Directive” substitute “contained in any provision of retained EU law”.

**86.** In Article 10C (application for certification) in paragraph (4)—

- (a) for “third country”, in both places, substitute “country outside the United Kingdom”;
- (b) omit “and the European Commission”.

**87.**—(1) Article 10D (report where applicant connected with a country outside the European Economic Area) is amended as follows.

(2) In the heading, for “European Economic Area” substitute “United Kingdom”.

(3) In paragraph (1), for “third country”, in both places, substitute “country outside the United Kingdom”.

(4) In paragraph (2), omit “and the European Economic Area”.

(5) In paragraph (3)(b), omit “third”.

**88.** Notwithstanding the amendments of Articles 10C and 10D made by regulations 86 and 87, where an application under Article 10C is made before exit day and the applicant is a person from an EEA state or a person controlled by a person from an EEA state—

- (a) the Northern Ireland Authority for Utility Regulation is not required to notify the Department for the Economy of the application under Article 10C(4), and
- (b) the Department for the Economy is not required to prepare a report under Article 10D in relation to the application.

**89.**—(1) Article 10E (certification) is amended as set out in paragraphs (2) to (6).

(2) In paragraph (1)—

- (a) omit “preliminary”;

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(1) [S.I. 1992/231 \(N.I. 1\)](#). Relevant amendments have been made by [S.R. 2005 No. 335](#), [2011 No. 155](#), [2011 No. 247](#), [2012 No. 385](#), [2013 No. 394](#), [2014 No. 198](#) and [2015 No. 249](#).

- (b) for “it should” substitute “to”.
- (3) In paragraph (3)—
  - (a) omit “preliminary”;
  - (b) after sub-paragraph (b) insert “and”;
  - (c) omit sub-paragraph (d) and the “and” before it.
- (4) In paragraph (4), for “(a), (b) or (d)” substitute “(a) or (b)”.
- (5) Omit paragraphs (5) and (6).
- (6) After paragraph (6) insert—
  - “(7) The Authority must publish its decision to certify or to refuse to certify the applicant, together with the reasons for it, in such manner as it considers appropriate.”.

(7) Where, immediately before exit day the Northern Ireland Authority for Utility Regulation has made a preliminary decision under Article 10E of the Electricity (Northern Ireland) Order 1992 on an application for certification, but not a final decision under Article 3 of Regulation (EC) No. 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network of cross-border exchanges in electricity and repealing Regulation (EC) No. 1228/2003, the Authority’s preliminary decision is to be treated on and after exit day as if it were a final decision made under Article 3 made immediately before exit day.

(8) If a preliminary decision of the Northern Ireland Authority for Utility Regulation is treated as a final decision to certify, or to refuse to certify, an applicant because of paragraph (7), the Authority must publish, in such manner as it considers appropriate, a document setting out that decision and the reasons for it.

**90.—**(1) Article 10F (grounds for certification) is amended as follows.

- (2) For paragraph (1) substitute—
  - “(1) This Article applies to a decision under Article 10E as to whether to certify an applicant.”.
- (3) In paragraph (2), for “decide that the applicant should be certified, or decide to certify the applicant,” substitute “decide to certify the applicant”.
- (4) In paragraph (7), omit “preliminary”.
- (5) For paragraph (8), substitute—
  - “(8) But regardless of whether a certification ground applies under paragraph (2), the Authority must not certify the applicant if a report prepared by the Department under Article 10D states that the certification of the applicant would put at risk the security of electricity supplies in the United Kingdom.”.
- (6) At the end add—
  - “(9) For the purposes of paragraph (4), Article 9(9) of the Directive is to be treated as if the comparison with the provisions of Chapter 5 of the Directive were a comparison with the provisions of Chapter 5 as they applied in relation to a member State immediately before exit day.
  - (10) The references in paragraph (5) to paragraphs (1) and (2) of Article 13 of the Directive are to be treated as references to those provisions with the following modifications—
    - (a) any reference to “Member State” (howsoever expressed) in paragraph (1) or (2) is to be read as if it were a reference to “the Authority”;
    - (b) paragraph (1) of Article 13 is to be read as if “Such designation shall be subject to approval by the Commission” were omitted;

- (c) paragraph (2)(b) of Article 13 is to be read as if the reference to Article 12 of the Directive were a reference to Article 12 with the omission of point (h);
- (d) paragraph (2)(e) of Article 13 is to be read as if—
  - (i) the words “Regulation (EC) No. 714/2009” were a reference to the Electricity Regulation, and
  - (ii) the words from “including” to the end were omitted.”.

**91.**—(1) Article 10H (designation for the purposes of EU electricity legislation) is amended as set out in paragraphs (2) to (5).

(2) In the heading, for “EU electricity legislation” substitute “the Electricity Regulation”.

(3) In paragraph (2), for the words from “Article 10(2)” to the end substitute “the Electricity Regulation”.

(4) In paragraph (3), for “that Article” substitute “the Electricity Regulation”.

(5) In paragraph (4)—

- (a) at the end of sub-paragraph (b) insert “and”;
- (b) omit sub-paragraph (d) and the “and” before it.

(6) A person who is designated as an electricity transmission system operator under Article 10H of the Electricity (Northern Ireland) Order 1992 for the purposes of Article 10(2) of the Electricity Directive immediately before exit day is to be treated, on and after exit day, as a person who is designated as an electricity transmission system operator under Article 10H for the purposes of the Electricity Regulation, if and so long as the person designated or (as the case may be) the person who nominated the person designated continues on and after exit day to hold a licence under Article 10(1)(b) of the Electricity (Northern Ireland) Order 1992 in relation to which the duty under Article 10B(1) or (2) of that Order applies, and to be certified under Article 10E of that Order.

(7) In paragraph (6)—

“the Electricity Directive” means Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC;

“the Electricity Regulation” means Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003.

**92.**—(1) Article 10I (monitoring and review of certification) is amended as follows.

(2) In paragraph (3)—

- (a) for “3rd March 2013” substitute “exit day”;
- (b) for “third country” substitute “country outside the United Kingdom”;
- (c) omit “and the European Commission”.

(3) In paragraph (4), omit “final”.

(4) Omit paragraphs (6) and (7).

(5) In paragraph (8), omit “or (6)”.

(6) In paragraph (12A), omit “or (7)”.

**93.**—(1) Article 10J (report as to connection of a certified person with a country outside the European Economic Area) is amended as follows.

(2) In the heading, for “European Economic Area” substitute “United Kingdom”.

- (3) In paragraph (1), for “a third country” substitute “a country outside the United Kingdom”.
- (4) In paragraph (2), omit “and the European Economic Area”.
- (5) In paragraph (3)(b), omit “third”.

**94.**—(1) Article 10K (continuation or withdrawal of certification) is amended as set out in paragraphs (2) to (8).

(2) In paragraph (1)—

- (a) omit “preliminary”;
- (b) omit “that either”;
- (c) in sub-paragraph (a), for “the certification should be continued” substitute “to continue the certification”;
- (d) for sub-paragraph (b) substitute—
  - “(b) to withdraw the certification;”.

(3) In paragraph (2), for “that the certification should be continued” substitute “to continue the certification”.

(4) Omit paragraphs (3) to (5).

(5) In paragraph (6)—

- (a) omit “final”;
- (b) after sub-paragraph (b) insert “and”;
- (c) omit sub-paragraph (d) and the “and” before it.

(6) In paragraphs (7) omit “final”.

(7) After paragraph (8) insert—

“(8A) The Authority must publish its decision to continue a certification, or to withdraw a certification, together with the reasons for it, in such manner as it considers appropriate.”.

(8) In paragraph (9)—

- (a) for “Article 10F(8)(a) and (b)” substitute “Article 10F(8)”;
- (b) for “Article 10F(8)(b)” substitute “Article 10F(8)”.

(9) Where, immediately before exit day, the Northern Ireland Authority for Utility Regulation has made a preliminary decision under Article 10K of the Electricity (Northern Ireland) Order 1992 on a review under Article 10I(2), (4) or (6) but not a final decision under Article 3 of Regulation (EC) No. 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network of cross-border exchanges in electricity and repealing Regulation (EC) No. 1228/2003, the Authority’s preliminary decision is to be treated on and after exit day as if it were a final decision under Article 3 made immediately before exit day.

(10) If a preliminary decision of the Northern Ireland Authority for Utility Regulation is treated as a final decision to continue a certification, or to withdraw a certification, because of paragraph (9), the Authority must publish, in such manner as it considers appropriate, a document setting out that decision and the reasons for it.

**95.**—(1) Article 10L (interpretation) is amended as follows.

(2) In paragraph (1)—

- (a) in the definition of “person from a third country” for “third country” in both places, substitute “country outside the United Kingdom”;
- (b) in the definition of “review period”, omit “or (7)”;

(c) omit the definition of “third country”.

(3) In paragraph (3), for “European Economic Area state” substitute “country outside the United Kingdom”.

(4) In paragraph (4)(a), for “European Economic Area state” substitute “country outside the United Kingdom”.

**96.** For Article 11A (compliance with Community obligations) substitute—

**“Licences: further conditions**

**11A.—**(1) The conditions included in a licence must—

(a) require the licence holder to give to the Authority, in each year it is required by the Authority to do so, a report containing such information as the Authority may require in relation to—

(i) the present and likely future balance between supply and demand for electricity in Northern Ireland and Ireland;

(ii) additional generating capacity under construction or being planned for Northern Ireland and Ireland;

(iii) the quality and level of maintenance of the generating plant and equipment and of the transmission and distribution and supply systems in Northern Ireland and Ireland,

and to give a copy of that report to the Department;

(b) require the licence holder to keep accounts in accordance with requirements corresponding to those in Article 31 of the Directive and to have them audited in accordance with those requirements and must confer on the Department and the Authority a right of access to the holder’s accounts for the purpose of ensuring compliance with those requirements; and

(c) ensure that all customers can purchase electricity from the supplier of their choice.

(2) For the purposes of paragraph (1)(b), the reference to Article 31 of the Directive is to be read as a reference to that Article with the modifications that—

(a) in paragraph (2), in the first sub-paragraph, the words from “adopted pursuant” to the end were omitted; and

(b) in paragraph (3), the third sentence were omitted.

(3) Transmission and distribution licence conditions must ensure that the holder—

(a) does not disclose commercially sensitive information obtained in the course of carrying out its business, except in accordance with a legal duty to disclose information; and

(b) prevents information about its own activities which might be commercially advantageous from being disclosed in a discriminatory manner.

(4) Transmission licence conditions must require the holder, as appropriate having regard to the activities authorised by the licence—

(a) to carry out tasks corresponding to the tasks mentioned in Article 12 or 15(1) of the Directive;

(b) where the holder carries out tasks corresponding to those mentioned in Article 15(1) of the Directive, to do so in accordance with such criteria as may be determined and published by the Authority;

- (c) in relation to any task corresponding to a task mentioned in Article 15(3) to (5) of the Directive, to follow such rules as may be specified in the conditions;
  - (d) to use transparent, non-discriminatory and market-based procedures in procuring the energy used in the carrying out of the holder's functions;
  - (e) where the holder balances electricity inputs to and offtakes from any transmission system used under the licence, to adopt and follow rules which are objective, transparent and non-discriminatory; and
  - (f) to comply with requirements corresponding to the requirements for system access laid down by Article 32 of the Directive.
- (5) For the purposes of paragraph (4), the references to Articles 12, 15 and 32 of the Directive are to be read as references to those Articles with the modifications that—
- (a) Article 12 is to be read as if point (h) were omitted;
  - (b) Article 15 is to be read as if—
    - (i) references to “Member States” or to “regulatory authorities” (however expressed) were references to “the Authority”, except as provided in heads (iii) and (iv);
    - (ii) in paragraph (3), the reference to Article 16 of [Directive 2009/28/EC](#) were a reference to that Article with references in it to Member States being read as references to “the Authority”;
    - (iii) in paragraph (4), the reference to “the Member State concerned” were a reference to “Northern Ireland”;
    - (iv) in paragraph (5), for “where Member States have so provided or Member States” there were substituted a reference to “the Authority”;
  - (c) Article 32 is to be read as if—
    - (i) references to “Member States”, and to “the regulatory authorities”, were references to “the Authority”;
    - (ii) in paragraph (1), “in accordance with Article 37” were omitted; and
    - (iii) in paragraph (2), “in particular having regard to Article 3, and” were omitted.
- (6) Distribution licence conditions must require the holder—
- (a) to carry out tasks corresponding to the tasks mentioned in Articles 25(1) and (7) of the Directive;
  - (b) not to discriminate between system users or classes of system users, and to provide system users with the information they need for efficient access to and use of the distribution system;
  - (c) when dispatching generating installations, to follow such rules as may be specified in the conditions for the purposes of giving priority to generating installations using renewable energy sources or waste or producing combined heat or power;
  - (d) to use transparent non-discriminatory and market-based procedures in procuring the energy used in the carrying out of the holder's functions;
  - (e) where the holder balances electricity inputs to and offtakes from any distribution system used under the licence, to adopt and follow rules which are objective, transparent and non-discriminatory;
  - (f) to comply with requirements corresponding to the requirements for system access mentioned in Article 32 of the Directive;

- (g) to facilitate (to the extent within the holder's control) the ability of customers to have access to consumption data.
- (7) For the purposes of paragraph (6)(f), the reference to Article 32 of the Directive is to be read as a reference to that Article with the modifications set out in paragraph (5)(c).
- (8) Transmission licence conditions must—
  - (a) where the holder, or a holder of a transmission licence in relation to whom the holder is a related transmission licensee (within the meaning given by Article 10L(1)), is certified under the first certification ground in Article 10F, require that the ownership unbundling requirement in Article 10G continues to be met in relation to the holder;
  - (b) where the holder, or a holder of a transmission licence in relation to whom the holder is a related transmission licensee, is certified under the second certification ground in Article 10F, require the maintenance in force of arrangements by virtue of which the requirements mentioned in Article 9(9) of the Directive were met;
  - (c) where the holder is certified under the third certification ground in Article 10F or is designated as an independent system operator for the purposes of that certification ground—
    - (i) require that requirements corresponding to the requirements mentioned in Articles 13(2) and 14(1) and (2) of the Directive which are relevant to the holder continue to be met; and
    - (ii) require that requirements corresponding to the requirements mentioned in Article 13(4) or 13(5) of the Directive which are relevant to the holder continue to be met; and
  - (d) require the holder to notify the Authority if any of the other conditions referred to in this paragraph ceases or is likely to cease to be met.
- (9) For the purposes of paragraph (8)(b), the reference to Article 9(9) of the Directive is to be treated as set out in Article 10F(9) of this Order.
- (10) For the purposes of paragraph (8)(c), the references to Articles 13(2), (4) and (5) and 14(2) of the Directive are to be read as references to those provisions with the following modifications—
  - (a) Article 13(2) is to be read as if it contained the modifications in Article 10F(10) of this Order;
  - (b) Article 13(4) is to be read as if—
    - (i) in the first sentence, “and” were inserted after “access charges”, and the words from “and payments” to “Regulation (EC) No. 714/2009” were omitted; and
    - (ii) in the third sentence “in accordance with this Chapter” were omitted;
  - (c) Articles 13(5) and 14(2) are to be read as if references to “the regulatory authority” were references to “the Authority”.
- (11) Subject to paragraph (8), distribution licence conditions must, in the case of a distribution licence granted to a person forming part of a vertically integrated undertaking—
  - (a) require that person to be independent in terms of its legal form, organisation and decision making from other activities not relating to distribution;
  - (b) require that person to meet criteria corresponding to the criteria set out in points (a) to (d) of Article 26(2) of the Directive; and

- (c) require that person not to take advantage of its vertical integration to distort competition and, in particular, in its communication and branding, not to create confusion in respect of the separate identity of any supply branch of the vertically integrated undertaking;

(12) For the purposes of paragraph (11)(b), Article 26(2) of the Directive is to be read as if—

- (a) in point (c), instead of “in accordance with Article 37(6), it read “by the Authority”;
- (b) in point (d), instead of to “the regulatory authority referred to in Article 35(1)”, it read “to the Authority”.

(13) Transmission licence conditions must, in particular, in the case of a transmission licence granted to a person forming part of a vertically integrated undertaking who carries on the combined activity of transmission and distribution system operator to which Article 29 of the Directive applies, as appropriate having regard to the activities authorised by the licence, require that person to comply with requirements corresponding to the requirements mentioned in that provision in relation to those activities.

(14) Paragraph (11)(a) does not prevent a person from acting as both a transmission system operator and a distribution system operator.

(15) Transmission, distribution and supply licence conditions must require that any supply of electricity by the licence holder to a household customer, or (as the case may be) any transmission or distribution by a licence holder in connection with such a supply, meets specified quality standards.

(16) Supply licence conditions must—

- (a) require that any supply of electricity by a licence holder to a household customer is given at reasonable, easily and clearly comparable, transparent and non-discriminatory prices;
- (b) require the introduction and maintenance of safeguards to help any consumers referred to in Article 12(3) of the Energy (Northern Ireland) Order 2003 in particular to avoid disconnection from an electricity supply;
- (c) ensure that consumers of electricity have access to information corresponding to that mentioned in Article 3(9) of the Directive;
- (d) ensure that household customers are not charged for changing supplier and are able to use transparent, simple and inexpensive complaints procedures;
- (e) require that information provided to consumers of electricity (including information about the contractual terms and conditions offered to such consumers and dispute settlement mechanisms) by the holder of such a licence is transparent and accurate;
- (f) make provision for customers wishing to change suppliers to be able to do so within 3 weeks;
- (g) ensure that customers have consumption data at their disposal and are able to give access to that data to other suppliers free of charge;
- (h) ensure that customers have access to information about sources of energy efficiency advice;
- (i) require that the holder of a licence provides its customers with a copy of the guidance which is to be published by the Authority pursuant to Article 7(5) of the Energy (Northern Ireland) Order 2003;



- (j) ensure that household customers are offered a wide choice of payment methods, which do not unduly discriminate between customers;
- (k) ensure that the terms and conditions of supply contracts offered by the licence holder to household customers contain information corresponding to the information mentioned in point (a), and meet criteria corresponding to the criteria set out in points (a) and (d), of paragraph 1 of Annex I to the Directive;
- (l) make provision for customers to be protected from unfair or misleading selling methods;
- (m) ensure that household customers receive a final bill following changing suppliers no later than 6 weeks after the change of supplier has taken place; and
- (n) ensure that the holder of the licence retains for at least 5 years data corresponding to the data mentioned in Article 40(1) and (2) of the Directive.

(17) For the purposes of paragraph (16)(c), the reference to Article 3(9) of the Directive is to be read as a reference to that provision with the modification that, in the second subparagraph, the reference to an undertaking situated outside the Community is to be read as if it were a reference to an undertaking situated outside Northern Ireland.

(18) For the purposes of paragraphs (15) and (16), “household customer” means a customer who purchases electricity for consumption by the customer’s own household.”.

**97.** In Article 11AB (conditions on transmission and distribution licences relating to priority dispatch) in paragraph (1) omit the words from “Article 16(2)(c)” to “in particular,”.

**98.** For Article 11AC (licensing and energy efficiency) substitute—

**“Licensing and energy efficiency**

**11AC.**—(1) Subject to paragraph (7), where a customer of the holder of a licence granted under Article 10(1)(c) takes a supply of electricity through a smart meter, the conditions included in that licence must require the holder of the licence to ensure that—

- (a) the meter complies with standards corresponding to those set out in Article 9(2)(a) and 10(2) of the Energy Efficiency Directive and where the customer so requests, Article 9(2)(c) of that Directive;
- (b) the customer is provided with the information specified in Article 9(2)(a) and 10(2) of the Energy Efficiency Directive;
- (c) the customer is provided with the information specified in Article 10(2)(b) of the Energy Efficiency Directive in the manner mentioned in that provision;
- (d) where the customer so requests, the customer or another person acting on the customer’s behalf is provided with the information specified in Article 9(2)(d) of the Energy Efficiency Directive in the manner mentioned in that provision;
- (e) the meter is physically secure and any information provided by it is held in a manner that complies with the requirements of any relevant legislation relating to data protection; and
- (f) advice and information specified in Article 9(2)(e) of the Energy Efficiency Directive is provided to the customer.

(2) For the purposes of paragraph (1)(b) and (c), the reference to Article 10(2) of the Energy Efficiency Directive is to be read as a reference to that Article with the modifications that—

- (a) the words “installed in accordance with Directives [2009/72/EC](#) and [2009/73/EC](#)” are to be omitted; and

(b) the reference to “Member States” is to be read as a reference to “the Authority”.

(3) Where a customer of the holder of a licence under Article 10(1)(c) does not take a supply of electricity through a smart meter, the conditions included in that licence must require the holder of the licence to ensure that any bill or statement of account provided to the customer is accurate and based on actual consumption and that the information specified in paragraph 1.1 of Annex VII to the Energy Efficiency Directive is provided to the customer in the manner specified in that provision.

(4) The conditions included in a licence under Article 10(1)(c) must require the holder of the licence to ensure that—

- (a) where a customer so requests, the information specified in Article 10(3)(a) of the Energy Efficiency Directive is provided to an energy service provider designated by the customer;
  - (b) any bill or statement of account sent to the customer—
    - (i) contains the information specified in Article 10(3)(c) of and paragraph 1.2 and 1.3 of Annex VII to the Energy Efficiency Directive;
    - (ii) complies with any guidance issued and published by the Authority; and
    - (iii) where the customer so requests, is provided in an electronic format;
  - (c) where a customer so requests, the information specified in Article 10(3)(b) of the Energy Efficiency Directive is provided to the customer;
  - (d) any customer taking a supply of electricity from the licence holder is provided with the information specified in paragraph 1.3 of Annex VII to the Energy Efficiency Directive in contract documentation;
  - (e) any information provided to a customer in accordance with conditions included under this paragraph is provided in a timely manner and in an easily understandable format enabling customers to compare deals on a like-for-like basis;
  - (f) a charge is not made in respect of any bill or statement of account sent to a customer or in respect of any information provided to the customer (whether in the bill or statement of account or otherwise).
- (5) The conditions included in a licence under Article 10(1)(b) must ensure that—
- (a) criteria corresponding to those specified in Annex XI to the Energy Efficiency Directive in relation to network regulation and network tariffs are satisfied;
  - (b) in relation to electricity from high efficiency co-generation, the licence holder complies with requirements corresponding to those set out in Annex XII of the Energy Efficiency Directive;
  - (c) where the licence holder is required to be responsible for conducting balancing services and other operational services—
    - (i) such services are part of a service bidding process which is transparent, non-discriminatory and open to scrutiny; and
    - (ii) in meeting the requirements for such services and ancillary services, the licence holder treats the persons mentioned in Article 15(8), second indent of the Energy Efficiency Directive in a non-discriminatory manner on the basis of their technical capabilities;
  - (d) the licence holder carries out tasks corresponding to the tasks specified for transmission system operators by Article 15(8), third indent of the Energy Efficiency Directive.

- (6) The conditions included in a licence under Article 10(1)(bb) must ensure that—
- (a) any customer taking a supply of electricity distributed by the licence holder is provided with the information mentioned in paragraph 1.3 of Annex VII to the Energy Efficiency Directive in contract documentation;
  - (b) network regulation and network tariffs comply with criteria corresponding to those set out in Annex XI to the Energy Efficiency Directive;
  - (c) the licence holder complies with requirements corresponding to those set out in Annex XII to the Energy Efficiency Directive in relation to electricity from high efficiency co-generation;
  - (d) where the licence holder is required to be responsible for conducting balancing services and other operational services—
    - (i) such services are part of a service bidding process which is transparent, non-discriminatory and open to scrutiny; and
    - (ii) in meeting the requirements for such services and ancillary services, the licence holder treats the persons mentioned in Article 15(8), second indent of the Energy Efficiency Directive in a non-discriminatory manner on the basis of their technical capabilities;
  - (e) the licence holder carries out tasks corresponding to the tasks specified for distribution system operators by Article 15(8), third indent of the Energy Efficiency Directive.
- (7) The duty on the Authority in paragraph (1) to include conditions in a licence only has effect where the Department—
- (a) has determined that it is technically possible, financially reasonable and proportionate in relation to the potential energy savings to implement a programme for the widespread provision of smart meters; and
  - (b) notifies the Authority in writing to that effect.
- (8) In this Article—
- (a) “the Energy Efficiency Directive” means the European Parliament and Council [Directive 2012/27/EU](#) on energy efficiency, amending Directives [2009/125/EC](#) and [2010/30/EU](#) and repealing Directives [2004/8/EC](#) and [2006/32/EC](#)(2);
  - (b) “smart meter” means—
    - (i) an electricity meter which can send and receive information using an electronic communications network; or
    - (ii) an electricity meter and a device which is associated with or ancillary to that meter and which enables information to be sent and received by the meter using an electronic communications network;
  - (c) “electronic communications network” has the same meaning as in section 32 of the Communications Act 2003(3); and
  - (d) other expressions which are also used in the Energy Efficiency Directive have the same meaning as in that Directive.”.

**99.**—(1) Article 11B (provision of additional capacity or energy efficiency measures) is amended as follows.

- (2) In paragraph (1) for “Article 11A(2)(a)” substitute “Article 11A(1)”.

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(2) OJ L 315, 14.11.2012, p. 1.

(3) [2003 c.21](#). Section 32 has been amended by [S.I. 2011/1210](#).

(3) In paragraph (5)—

- (a) for “such procedures as may be” substitute “transparent and non-discriminatory procedures”;
- (b) for “requirements of Article 8” substitute “requirements specified in Article 8”;
- (c) for “that Article” substitute “those requirements”.

(4) After paragraph (5) add—

“(6) The Department must publish details of any tendering process for the purposes of this Article at least 6 months prior to the date for submission of tenders.

(7) For the purposes of this Article, Article 8 of the Directive is to be read as if—

- (a) any reference to Member States were a reference to the Department;
- (b) in paragraph (3)—
  - (i) the first sub-paragraph were omitted;
  - (ii) after the word “available” there were inserted “in such manner as the Department considers appropriate”;
  - (iii) the words “established in the territory of a Member State” were omitted;
- (c) in paragraph (5), for the words “a regulatory authority referred to in Article 35(1)” there were substituted “the Authority”.

**100.**—(1) Article 31A (dispute resolution) is amended as follows.

(2) In paragraph (1)(b), for the words from “imposed” to “Directive” substitute “which satisfies the requirement in paragraph (1A)”.

(3) After paragraph (1) insert—

“(1A) The requirement in this paragraph is that either—

- (a) the obligation is an obligation imposed on the holder before exit day pursuant to the Directive, including such an obligation as modified on or after exit day, or
- (b) both the following apply—
  - (i) the obligation was imposed on the holder on or after exit day, and
  - (ii) the obligation is such that, if it had been imposed immediately before exit day, it would have been an obligation imposed pursuant to the Directive;

and in this paragraph “the holder” means the holder mentioned in paragraph (1)(a).”.

**101.**—(1) Article 39 (consent required for construction, etc., of generating stations) is amended as follows.

(2) In paragraph (9), for the words from “the criteria” to the end substitute “criteria determined by the Department from time to time and published by it which take into account matters corresponding to the matters mentioned in points (a) to (i) and (k) in Article 7(2) of the Directive”.

**102.** In Article 40 (consent required for overhead lines), in paragraph (6), for the words “the criteria” to the end substitute “objective and non-discriminatory criteria determined by the Department from time to time and published by it”.

**103.** In Article 50 (general functions of Authority), after paragraph (3B) insert—

“(3C) The references in paragraph (3B) to the following provisions of the Directive are to be treated as references to those provisions with the following modifications—

- (a) Article 26(3) is to be read—
  - (i) as if the reference to “Member States” were a reference to “the Department”;

- (ii) as if the reference to “regulatory authorities” were a reference to “the Authority”;
- (b) Article 37(1) is to be read as if sub-paragraph (g) were omitted;
- (c) Article 37(1)(q) is to be read as if for “Regulation (EC) No. 714/2009” there were substituted “the Electricity Regulation”;
- (d) Article 37(1)(s) is to be read as if—
  - (i) the words “Community and third country” were omitted, and
  - (ii) after “operators” there were inserted “in the United Kingdom and transmission system operators in countries outside the United Kingdom”;
- (e) Article 37(1)(t) is to be read as if the reference to Article 42 were to Article 42 with the omission of the words “must cause” to “internal market and”;
- (f) Article 37(3)(f) is to be read as if for “Regulation (EC) No. 714/2009” there were substituted “the Electricity Regulation”.

### **The Gas (Northern Ireland) Order 1996**

**104.** The Gas (Northern Ireland) Order 1996(4) is amended as follows.

**105.** In Article 7 (exemptions from Article 6) in paragraph (4A), for “the relevant requirements and prohibitions laid down by the Directive” substitute “relevant requirements and prohibitions contained in any provision of retained EU law”.

**106.** In Article 8 (licences authorising supply etc.) for paragraph (7B) substitute—

“(7B) In paragraph (4A) “published criteria” means criteria determined by the Department and published by it from time to time which are objective and non-discriminatory.”.

**107.** In Article 8C (application for certification) for paragraph (2) substitute—

“(2) If the application is made on or after 3rd March 2013 and the applicant is a person from a country outside the United Kingdom or a person controlled by a person from a country outside the United Kingdom, the Authority must notify the Department as soon as is reasonably practicable.”.

**108.**—(1) Article 8D (report where applicant connected with a country outside the European Economic Area) is amended as follows.

(2) In the heading, for “European Economic Area” substitute “United Kingdom”.

(3) In paragraph (1), for “third country”, in both places, substitute “country outside the United Kingdom”.

(4) In paragraph (2), omit “and the European Economic Area”.

(5) In paragraph (3)(b), omit “third”.

**109.** Notwithstanding the amendments of Articles 8C and 8D of the Gas (Northern Ireland) Order 1996 made by regulations 107 and 108, where an application under Article 8C is made before exit day and the applicant is a person from an EEA state or a person controlled by a person from an EEA state—

- (a) the Northern Ireland Authority for Utility Regulation is not required to notify the Department for the Economy of the application under Article 8C(2), and

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(4) [S.I. 1996/275 \(N.I. 2\)](#). Relevant amendments have been made by [S.R. 2006 No. 358](#), [2011 No. 155](#), [2013 No. 92](#), [2014 No. 198](#) and [2015 No. 249](#).

- (b) the Department for the Economy is not required to prepare a report under Article 8D in relation to the application.

**110.**—(1) Article 8E (certification) is amended as set out in paragraphs (2) to (6).

(2) In paragraph (1)—

- (a) omit “preliminary”;
- (b) for “it should” substitute “to”.

(3) In paragraph (3)—

- (a) omit “preliminary”;
- (b) after sub-paragraph (b) insert “and”;
- (c) omit sub-paragraph (d) and the “and” before it.

(4) In paragraph (4), for “(a), (b) or (d)” substitute “(a) or (b)”.

(5) Omit paragraphs (5) and (6).

(6) After paragraph (6) insert—

“(7) The Authority must publish its decision to certify or refuse to certify the applicant, together with the reasons for it, in such manner as it considers appropriate.”.

(7) Where, immediately before exit day, the Northern Ireland Authority for Utility Regulation has made a preliminary decision under Article 8E of the Gas (Northern Ireland) Order 1996 on an application for certification, but not a final decision under Article 3 of Regulation (EC) No. 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions of access to the natural gas transmission networks and repealing Regulation (EC) No. 1775/2005, the Authority’s preliminary decision is to be treated on and after exit day as if it were a final decision under Article 3 made immediately before exit day.

(8) If a preliminary decision of the Northern Ireland Authority for Utility Regulation is treated as a final decision to certify, or to refuse to certify, an applicant because of paragraph (7), the Authority must publish, in such manner as it considers appropriate, a document setting out that decision and the reasons for it.

**111.**—(1) Article 8F (grounds for certification) is amended as follows.

(2) For paragraph (1) substitute—

“(1) This Article applies to a decision under Article 8E as to whether to certify an applicant.”.

(3) In paragraph (2)—

- (a) for “decide that the applicant should be certified, or decide to certify the applicant,” substitute “decide to certify the applicant”;
- (b) omit “four”.

(4) Omit paragraph (5).

(5) In paragraph (6), omit the words from “in accordance” to the end.

(6) In paragraph (7), omit “preliminary”.

(7) For paragraph (8) substitute—

“(8) But, regardless of whether a certification ground applies under paragraph (2), the Authority must not certify the applicant if a report prepared by the Department under Article 8D states that the certification of the applicant would put at risk the security of gas supplies in the United Kingdom.”.

(8) At the end add—

“(9) The references in paragraph (4) to Article 14(1) and (2) and 15(1) of the Directive are to be treated as references to those provisions with the following modifications—

- (a) any reference to “Member State” (howsoever expressed) in paragraphs (1) and (2) of Article 14 is to be read as if it were a reference to “the Authority”;
- (b) paragraph (1) of Article 14 is to be read as if the reference to “Such designation shall be subject to approval by the Commission” were omitted;
- (c) paragraph (2)(b) of Article 14 is to be read as if after “Article 13” there were inserted “as implemented in relation to Northern Ireland immediately before exit day, disregarding for this purpose—
  - (i) paragraph 2,
  - (ii) paragraph 3 so far as relating to Article 41(6)(c), and
  - (iii) paragraph 4 except as it relates to such minimum standards, if any, as apply in Northern Ireland”;
- (d) paragraph (2)(e) of Article 14 is to be read as if—
  - (i) the words “Regulation (EC) No. 715/2009” were a reference to the Gas Regulation, and
  - (ii) the words from “including” to the end were omitted;
- (e) paragraph (1) of Article 15 is to be read as if, in the second sentence, “pursuant to Article 33” were omitted.”.

**112.**—(1) Article 8H (designation for the purposes of EU gas legislation) is amended as set out in paragraphs (2) to (5).

(2) In the heading, for “EU gas legislation” substitute “the Gas Regulation”.

(3) In paragraph (2)—

- (a) omit “or third”;
- (b) for the words from “Article 10(2)” to the end substitute “the Gas Regulation”.

(4) In paragraph (3), for “that Article” substitute “the Gas Regulation”.

(5) In paragraph (4)—

- (a) at the end of sub-paragraph (b) insert “and”;
- (b) omit sub-paragraph (d) and the “and” before it.

(6) A person who is designated as a gas transmission system operator under Article 8H of the Gas (Northern Ireland) Order 1996 for the purposes of Article 10(2) of the Gas Directive immediately before exit day is to be treated, on and after exit day, as a person who is designated as a gas transmission system operator under Article 8H for the purposes of the Gas Regulation, if and for so long as the person designated or (as the case may be) the person who nominated the person designated continues on and after exit day to hold a licence under Article 8(1)(a) of the Gas (Northern Ireland) Order 1996 and to be certified under Article 8E of that Order.

(7) In paragraph (6)—

“the Gas Directive” means [Directive 2009/73/EC](#) of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing [Directive 2003/55/EC](#);

“the Gas Regulation” means [Regulation \(EC\) No 715/2009](#) of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing [Regulation \(EC\) No 1775/2005](#).

**113.**—(1) Article 8I (monitoring and review of certification) is amended as follows.

(2) In paragraph (3)—

- (a) for “3rd March 2013” substitute “exit day”;
- (b) for “third country” substitute “country outside the United Kingdom”;
- (c) omit “and the European Commission”.

(3) In paragraph (4), omit “final”.

(4) Omit paragraphs (6) and (7).

(5) In paragraph (8), omit “or (6)”.

(6) In paragraph (12A), for “paragraphs (5) or (7)” substitute “paragraph (5)”.

**114.**—(1) Article 8J (report as to any connection of a certified person with a country outside the European Economic Area) is amended as follows.

(2) In the heading, for “European Economic Area” substitute “United Kingdom”.

(3) In paragraph (1), for “a third country” substitute “a country outside the United Kingdom”.

(4) In paragraph (2), omit “and the European Economic Area”.

(5) In paragraph (3)(b), omit “third”.

**115.**—(1) Article 8K (continuation or withdrawal of certification) is amended as set out in paragraphs (2) to (8).

(2) In paragraph (1)—

- (a) omit “preliminary”;
- (b) omit “that either”;
- (c) in sub-paragraph (a), for “the certification should be continued” substitute “to continue the certification”;
- (d) for sub-paragraph (b) substitute—  
“to withdraw the certification;”.

(3) In paragraph (2), for “that the certification should be continued” substitute “to continue the certification”.

(4) Omit paragraphs (3), (4) and (5).

(5) In paragraph (6)—

- (a) omit “final”;
- (b) after sub-paragraph (b) insert “and”;
- (c) omit sub-paragraph (d) and the “and” before it.

(6) In paragraph (7), omit “final”.

(7) After paragraph (8) insert—

“(8A) The Authority must publish its decision to continue a certification, or to withdraw a certification, together with the reasons for it, in such manner as it considers appropriate.”.

(8) In paragraph (9)—

- (a) for “Article 8F(8)(a) and (b)” substitute “Article 8F(8)”;
- (b) for “Article 8F(8)(b)” substitute “Article 8F(8)”.

(9) Where immediately before exit day, the Northern Ireland Authority for Utility Regulation has made a preliminary decision under Article 8K of the Gas (Northern Ireland) Order 1996 on a



review under Article 8I(2), (4) or (6) but not a final decision under Article 3 of Regulation (EC) No. 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No. 1775/2005, the Authority's preliminary decision is to be treated on and after exit day as if it were a final decision under Article 3 made immediately before exit day.

(10) If a preliminary decision of the Northern Ireland Authority for Utility Regulation is treated as a final decision to continue a certification, or to withdraw a certification, because of paragraph (9), the Authority must publish, in such manner as it considers appropriate, a document setting out that decision and the reasons for it.

**116.**—(1) Article 8L (interpretation) is amended as follows.

(2) In paragraph (1)—

- (a) in the definition of “person from a third country”, for “third country”, in both places, substitute “country outside the United Kingdom”;
- (b) in the definition of “review period”, omit “or (7)”;
- (c) omit the definition of “third country”.

(3) In paragraph (3), for “European Economic Area state” substitute “country outside the United Kingdom”.

(4) In paragraph (4), for “European Economic Area state” substitute “country outside the United Kingdom”.

**117.** For Article 9A (limitation of rights under exclusive licences) substitute—

“**9A.** The prohibition in Article 9(3) does not apply to the grant by the Department or the Authority of a licence under Article 8(1)(c) authorising the holder to supply a customer where the gas is supplied and conveyed through a direct line.”.

**118.** For Article 10A (compliance with community obligations) substitute—

**“Licences: further conditions**

**10A.**—(1) The conditions included in a licence must—

- (a) ensure that the licence holder and, if appropriate, any activity authorised by the licence and the construction or operation of any pipe-line, facility or associated apparatus used in connection with that activity meets the published criteria referred to in Article 8(7B);
- (b) require the licence holder to develop and publish technical safety criteria and rules which are objective and non-discriminatory;
- (c) require the licence holder to keep accounts in accordance with requirements corresponding to the requirements in Article 31 of the Directive and to have them audited in accordance with those requirements and must confer on the Department and the Authority a right of access to the licence holder's accounts for the purpose of ensuring compliance with those requirements.

(2) For the purposes of paragraph (1)(c), the reference to Article 31 of the Directive is to be read as a reference to that Article with the modifications that—

- (a) in paragraph (2), in the first sub-paragraph, the words from “adopted pursuant” to the end are omitted; and
- (b) in paragraph (3), the third sentence is omitted.

(3) Conditions included in a licence under Article 8(1)(a) must, having regard to the activities authorised by the licence, require the holder—

- (a) where the holder balances gas inputs to and offtakes from any pipeline used under the licence, to adopt, follow, and make publicly available, rules which are objective, transparent and non-discriminatory;
  - (b) to procure energy used for carrying out the holder's functions in accordance with procedures which are transparent, non-discriminatory and market based;
  - (c) where appropriate in relation to the holder's circumstances, to carry out tasks corresponding to the tasks mentioned in Article 25(1) of the Directive;
  - (d) to refrain from discriminating between persons or classes of person using or intending to use any pipe-line, facility or associated apparatus operated for the purposes of the licence;
  - (e) to provide such persons with the information they need for efficient access to and use of the system;
  - (f) to provide any other licence holder mentioned in Article 25(3) of the Directive with sufficient information to achieve an outcome that corresponds to the outcome mentioned in that provision;
  - (g) to comply with requirements for system access corresponding to the requirements mentioned in Article 32 of the Directive (as read with Article 2 of the Commission Decision);
  - (h) to take any measures necessary for the purpose of ensuring that information necessary for effective competition and for the effective functioning of the market is made public;
  - (i) to facilitate (to the extent within the holder's control) the ability of customers to change suppliers within 3 weeks;
  - (j) to facilitate (to the extent within the holder's control) the ability of customers to have access to consumption data.
- (4) For the purposes of paragraph (3)(g), the reference to Article 32 of the Directive is to be read as a reference to that Article with the modifications that—
- (a) for references to "Member States" there were substituted references to "the Department";
  - (b) in paragraph (1), for the words "in accordance with Article 41 by a regulatory authority referred to in Article 39(1)" there were substituted "by the Authority";
  - (c) in paragraph (3), for the reference to "Community competition rules" there were substituted a reference to "retained EU law relating to competition".
- (5) Conditions included in a licence under Article 8(1)(a) must—
- (a) provide for the Authority to approve, in advance of their coming into operation, any terms and conditions—
    - (i) for the connection and access to any pipe-line, facility or associated apparatus operated by the holder for the purposes of the licence including but not limited to the tariffs, or the method of determining the tariffs for such connection or access; and
    - (ii) for the provision of any balancing services; and
  - (b) provide that where the licence holder enters into a contract directly with a household customer (within the meaning given in Article 7D) for the provision to that customer of services under the licence, or makes arrangements in pursuance of which a household customer enters into a contract with another person for a supply of gas to that customer, then to the extent that this is within the licence holder's control—

- (i) the terms and conditions of any such contract comply with requirements which correspond to those mentioned in points (a) and (d) of paragraph 1 of Annex I to the Directive; and
  - (ii) requirements corresponding to those mentioned in points (b), (c) and (g) of paragraph 1 of Annex I to the Directive are complied with in relation to the customer.
- (6) For the purposes of paragraph (5)(b)(ii), point (g) of paragraph 1 of Annex I to the Directive is to be read as if for the words “the national legislation applicable” there were substituted “the Gas (Northern Ireland) Order 1996”.
- (7) The conditions included in a licence under Article 8(1)(a) granted to a person forming part of a vertically integrated undertaking must—
  - (a) require that person to continue to be independent in terms of that person’s legal form, organisation and decision-making in relation to that person’s activities under the licence and to comply with requirements corresponding to those mentioned in Article 26(2) of the Directive for independence in terms of organisation and decision making, in particular the minimum criteria laid down thereby and to comply with requirements corresponding to the requirements in relation to communication and branding mentioned in Article 26(3) of the Directive; and
  - (b) if the person carries on combined activity as the holder of a licence under Article 8(1)(a), (b), (c) and (d), require that person to comply with requirements corresponding to those mentioned in Article 29 of the Directive for independence in terms of legal form, organisation and decision making in relation to activities under the licence.
- (8) Paragraph (7)(a) does not prevent a person from acting as the holder of a licence of more than one type under Article 8(1).
- (9) For the purposes of paragraph (7)—
  - (a) Article 26(2) of the Directive is to be read as if—
    - (i) in point (c), for the words “in accordance with Article 41(6)”, there is substituted “by the Authority”;
    - (ii) in point (d), for the words “to the regulatory authority referred to in Article 39(1)”, there is substituted “to the Authority”;
  - (b) Article 26(3) of the Directive is to be read as if for the words from “the Member States” to “or other competent bodies” there were substituted “the Authority must monitor all the activities of the distribution system operator”.
- (10) Paragraph (7)(a) does not apply in the case of a licence holder who does not supply gas to persons or premises, but who conveys gas from one place to another through one or more pipeline systems to which there are fewer than 100,000 premises connected.
- (11) The conditions included in a licence under Article 8(1)(a) must—
  - (a) where the holder, or a person who holds a licence under Article 8(1)(a) in relation to whom the holder is a related conveyance licensee, is certified under the first certification ground in Article 8F, require the ownership unbundling requirement in Article 8G to continue to be met in relation to the holder;
  - (b) where the holder is certified under the second certification ground in Article 8F or is designated as independent system operator for the purposes of that certification ground—

- (i) require that requirements corresponding to those mentioned in Articles 14(1) and (2) and 15(1) and (2) of the Directive which are relevant to the holder continue to be met; and
    - (ii) require that requirements corresponding to those mentioned in Article 14(4) or 14(5) of the Directive which are relevant to the holder continue to be met; and
  - (c) require the holder to notify the Authority if any of the other conditions referred to in this paragraph ceases or is likely to cease to be met.
- (12) For the purposes of paragraph (11)—
- (a) the references to Article 14 are to be read as references to that provision as if it contained the modifications in Article 8F(9) of this Order;
  - (b) Article 14(4) is to be read as if the words “in accordance with this Chapter” were omitted;
  - (c) Article 14(5) and 15(2) are to be read as if references to “the regulatory authority” were references to “the Authority”;
  - (d) paragraph (1) of Article 15 is to be read as if, in the second sentence, “pursuant to Article 33” were omitted;
  - (e) item (c) in Article 15(2) is to be read as if for the words “in accordance with Article 41(6)”, there were substituted “by the Authority”.
- (13) The conditions included in a licence under Article 8(1)(a), as appropriate having regard to the activities authorised by the licence, must require the holder to carry out tasks corresponding to those mentioned in Article 13(1) of the Directive.
- (14) The conditions included in a licence under Article 8(1)(b) must require the holder, as appropriate, having regard to the activities authorised by the licence—
- (a) to carry out tasks corresponding to the tasks mentioned in Article 13(1) of the Directive;
  - (b) to comply with requirements corresponding to the requirements for access to storage mentioned in Article 33 of the Directive in accordance with criteria published by the Authority; and
  - (c) where the person forms part of a vertically integrated undertaking, to comply with requirements corresponding to those mentioned in Article 15 of the Directive concerning independence in terms of legal form, organisation and decision-making in relation to its activities under the licence and, in particular, to comply with minimum criteria corresponding to those mentioned in Article 15(2) of the Directive.
- (15) For the purposes of paragraph (14)—
- (a) the reference to Article 15 of the Directive is to be read as a reference to that Article with the modifications set out in paragraph (12)(c), (d) and (e);
  - (b) Article 33 is to be read as if—
    - (i) any reference to “Member States”, and to “the regulatory authorities” in Article 33 were a reference to “the Department”;
    - (ii) in paragraph (1), the third sub-paragraph were omitted;
    - (iii) in paragraph (3), in the second sub-paragraph the words from “by 1 January 2005” were a reference to “on an annual basis”.
- (16) The conditions included in a licence under Article 8(1)(c) must—

- (a) require the introduction and maintenance of safeguards to help any consumers referred to in Article 14(3) of the Energy (Northern Ireland) Order 2003 and individuals who are consumers in rural areas in particular to avoid disconnection from the gas pipe-line system;
  - (b) ensure that consumers of gas have access to information (including information about the contractual terms and conditions offered to such consumers);
  - (c) ensure that all customers can exercise their freedom to purchase gas from the supplier of their choice;
  - (d) ensure that persons exercising that freedom are not charged therefor and are able to use transparent, simple and inexpensive complaints procedures;
  - (e) require that information provided to consumers of gas (including information about the contractual terms and conditions offered to such consumers) by the holder of the licence are sufficiently transparent to enable the consumer to exercise that freedom;
  - (f) make provision for customers wishing to change suppliers to be able to do so within 3 weeks;
  - (g) ensure that customers have consumption data at their disposal and are able to give access to that data to other suppliers;
  - (h) ensure that customers have access to information about sources of energy efficiency advice;
  - (i) require that the holder of the licence provides its customers with a copy of the guidance which is to be published by the Authority pursuant to Article 7(5) of the Energy (Northern Ireland) Order 2003;
  - (j) ensure that household customers are offered a wide choice of payment methods which do not unduly discriminate between customers;
  - (k) ensure that the terms and conditions of supply contracts offered by the licence holder to household customers comply with requirements corresponding to those mentioned in points (a) and (d) of paragraph 1 of Annex I to the Directive;
  - (l) make provision for customers to be protected from unfair or misleading selling methods;
  - (m) ensure that household customers receive a final bill following changing suppliers no later than six weeks from the date on which the change occurs; and
  - (n) ensure that the holder of the licence for at least five years maintains records of data corresponding to that required by Article 44 of the Directive.
- (17) Conditions included in a licence under Article 8(1)(d) must require the holder as appropriate having regard to the activities authorised by the licence—
- (a) to carry out tasks corresponding to the tasks mentioned in Article 13(1) of the Directive;
  - (b) to keep accounts in terms corresponding to the requirements of Article 31 of the Directive and to have them audited in a manner corresponding to those requirements; and
  - (c) to comply with requirements for system access corresponding to those mentioned in Article 32 of the Directive (as read with Article 2 of the Commission Decision).
- (18) Conditions included in a licence under Article 8(1)(d) must confer on the Department or the Authority a right of access to the licence holder's accounts for the purposes of ensuring compliance with the requirements mentioned in paragraph (17).

- (19) For the purposes of paragraph (17)—
  - (a) the reference to Article 31 of the Directive is to be read as a reference to that Article with the modifications set out in paragraph (2);
  - (b) the reference to Article 32 of the Directive is to be read as a reference to that Article with the modifications set out in paragraph (4).
- (20) Conditions included in a licence under Article 8(1) must ensure that the holder—
  - (a) does not disclose commercially sensitive information obtained in the course of carrying out its business, except in accordance with a legal duty to disclose information; and
  - (b) prevents information about its own activities which might be commercially advantageous from being disclosed in a discriminatory manner.”.

**119.** For Article 10AA (licensing and energy efficiency) substitute—

**“Licensing and energy efficiency**

**10AA.**—(1) Subject to paragraph (5), where a customer of the holder of a licence granted under Article 8(1)(c) takes a supply of gas through a smart meter, the conditions included in that licence must require the holder of the licence to ensure that—

- (a) the meter complies with standards corresponding to those set out in Article 9(2)(a) and 10(2) of the Energy Efficiency Directive and where the customer so requests, Article 9(2)(c) of that Directive;
- (b) the customer is provided with the information specified in Article 9(2)(a) and 10(2) of the Energy Efficiency Directive;
- (c) the customer is provided with the information specified in Article 10(2)(b) of the Energy Efficiency Directive in the manner mentioned in that provision;
- (d) where the customer so requests, the customer or another person acting on the customer’s behalf is provided with the information specified in Article 9(2)(d) of the Energy Efficiency Directive in the manner mentioned in that provision;
- (e) the meter is physically secure and any information provided by it is held in a manner that complies with the requirements of any relevant legislation relating to data protection; and
- (f) advice and information specified in Article 9(2)(e) of the Energy Efficiency Directive is provided to the customer.

(2) For the purposes of paragraph (1)(b) and (c), the reference to Article 10(2) of the Energy Efficiency Directive is to be read as a reference to that Article with the modifications that—

- (a) the words “installed in accordance with Directives [2009/72/EC](#) and [2009/73/EC](#)” are to be omitted; and
- (b) the reference to “Member States” is to be read as a reference to “the Authority”.

(3) Where a customer of the holder of a licence under Article 8(1)(c) does not take a supply of gas through a smart meter, the conditions included in that licence must require the holder of the licence to ensure that any bill or statement of account provided to the customer is accurate and based on actual consumption and that the information specified in paragraph 1.1 of Annex VII to the Energy Efficiency Directive is provided to the customer in the manner specified in that provision.

(4) The conditions included in a licence under Article 8(1)(c) must require the holder of the licence to ensure that—

- (a) where a customer so requests, the information specified in Article 10(3)(a) of the Energy Efficiency Directive is provided to an energy service provider designated by the customer;
  - (b) any bill or statement of account sent to the customer—
    - (i) contains the information specified in Article 10(3)(c) of and paragraph 1.2 and 1.3 of Annex VII to the Energy Efficiency Directive;
    - (ii) complies with any guidance issued and published by the Authority; and
    - (iii) where the customer so requests, is provided in an electronic format;
  - (c) where a customer so requests, the information specified in Article 10(3)(b) of the Energy Efficiency Directive is provided to the customer;
  - (d) any customer taking a supply of gas from the licence holder is provided with the information specified in paragraph 1.3 of Annex VII to the Energy Efficiency Directive in contract documentation;
  - (e) any information provided to a customer in accordance with conditions included under this paragraph is provided in a timely manner and in an easily understandable format enabling customers to compare deals on a like-for-like basis;
  - (f) a charge is not made in respect of any bill or statement of account sent to a customer or in respect of any information provided to the customer (whether in the bill or statement of account or otherwise).
- (5) The duty on the Authority in paragraph (1) to include conditions in a licence only has effect where the Department—
- (a) has determined that it is technically possible, financially reasonable and proportionate in relation to the potential energy savings to implement a programme for the widespread provision of smart meters; and
  - (b) notifies the Authority in writing to that effect.
- (6) In this Article—
- (a) “the Energy Efficiency Directive” means the European Parliament and Council [Directive 2012/27/EU](#) on energy efficiency, amending Directives [2009/125/EC](#) and [2010/30/EU](#) and repealing Directives [2004/8/EC](#) and [2006/32/EC](#);
  - (b) “smart meter” means—
    - (i) a gas meter which can send and receive information using an electronic communications network; or
    - (ii) a gas meter and a device which is associated with or ancillary to that meter and which enables information to be sent and received by the meter using an electronic communication network;
  - (c) “electronic communications network” has the same meaning as in section 32 of the Communications Act 2003; and
  - (d) other expressions which are also used in the Energy Efficiency Directive have the same meaning as in that Directive.”.

**120.**—(1) Article 10B (exemption from requirement for system access) is amended as follows.

(2) In paragraph (7)(b)(ii), for the words from “within” to “that paragraph” substitute “which apply to the holder”.

(3) Omit paragraph (9).

(4) After paragraph (10) insert—

“(10A) An obligation is a public service obligation for the purposes of this Article if—

- (a) it is imposed by or under a statutory provision, and
- (b) the provision is identified in a notice issued by the Department as a provision imposing or enabling the imposition of, a public service obligation within the meaning of Article 3(2) of the Directive (as it had effect immediately before exit day).

(10B) For the purposes of paragraph (10A), the reference to Article 3(2) is to be read as if the reference in that provision to natural gas undertakings of the Community were a reference to natural gas undertakings of the United Kingdom.”.

(5) Omit paragraph (11).

(6) In paragraph (12)(a), for “Article 10A(3) or (10)” substitute “Article 10A(3) or (17)”.

**121.**—(1) Article 27 (general functions) is amended as follows.

(2) In paragraph (3B)—

- (a) in sub-paragraph (b), for “and (r) to” substitute “, (r) and”;
- (b) omit sub-paragraph (d).

(3) After paragraph (3B) add—

“(3C) For the purposes of paragraph (3B)(c), the reference to Article 41(3)(a) is to be read as if the reference in that provision to Article 41 were a reference to Article 41 as implemented in Northern Ireland immediately before exit day.”.

**122.**—(1) Article 27A (dispute resolution) is amended as follows.

(2) In paragraph (1)(b), for the words from “imposed” to “Directive” substitute “which satisfies the requirement in paragraph (1A)”.

(3) After paragraph (1) insert—

“(1A) The requirement in this paragraph is that either—

- (a) the obligation is an obligation imposed on the holder before exit day pursuant to the Directive, including such an obligation as modified on or after exit day, or
- (b) both the following apply—

- (i) the obligation was imposed on the holder on or after exit day, and
- (ii) the obligation is such that, if it had been imposed immediately before exit day, it would have been an obligation imposed pursuant to the Directive;

and in this paragraph “the holder” means the holder mentioned in paragraph (1)(a).”.

**123.** In Article 38A (requirements for major pipelines etc.), in paragraph (5)—

- (a) for “the criteria” substitute “objective and non-discriminatory criteria”;
- (b) omit “for the purposes of and in accordance with Article 4(2) of the Directive”.

**124.**—(1) Article 39A (exemption from relevant requirements) is amended as follows.

(2) In paragraph (2)(b), for “with” to “Directive” substitute “with provisions corresponding to those set out in Articles 32, 33 or 34 of the Directive”;

(3) After paragraph (2) insert—

“(2A) For the purposes of paragraph (2)(b)—

- (a) the reference to Article 32 of the Directive is to be read as a reference to that Article with the modifications set out in Article 10A(4) of this Order;



- (b) the reference to Article 33 of the Directive is to be read as a reference to that Article with the modifications set out in Article 10A(15)(b) of this Order;
- (c) the reference to Article 34 is to be read as a reference to that Article with the following modifications—
  - (i) references to “Member States” are to be read as references to “the Department”;
  - (ii) in paragraph (1), the final sentence is to be omitted;
  - (iii) in paragraph (2)(d), the reference to “Community law” is to be read as a reference to retained EU law;
  - (iv) paragraph (4) is to be omitted.”.
- (4) Omit paragraph (4).

**125.**—(1) Article 39B (review of exemptions under Article 39A) is amended as follows.

(2) Omit paragraphs (1) and (2).

(3) In paragraph (4)—

(a) in sub-paragraph (a)—

(i) after “if” insert “before exit day”;

(ii) after “paragraph (1)” insert “(as it then had effect)”;

(b) in sub-paragraph (b), after “if” insert “before exit day”;

(c) for sub-paragraph (c) substitute—

“(c) if—

(i) before exit day the Authority sent the European Commission a copy of the exemption and terms under paragraph (1) (as it then had effect), and

(ii) the European Commission does not act as described in paragraph (a) or (b) before exit day,

the date four months after the Authority sent the European Commission a copy of the exemption under paragraph (1) or exit day, whichever is the sooner;

(d) if the decision to give the exemption was published under Article 39A(12) on or after exit day, the date on which the decision was published under Article 39A(12).”.

**126.** In Article 45 (directions restricting the use of certain information), in paragraph (1A), for the words from “information” to the end substitute “commercially sensitive information obtained in the course of carrying out its business, except in accordance with a legal duty to disclose information.”.

### **The Energy (Northern Ireland) Order 2003**

**127.** The Energy (Northern Ireland) Order 2003(5) is amended as follows.

**128.** In Article 2 (interpretation), in paragraph (2)—

(a) omit the definition of “the Agency”;

(b) omit the definition of “the Agency Regulation”;

(c) omit the definition of “designated regulatory authority”;

(d) at the appropriate places insert—

(5) [S.I. 2003/419 \(N.I. 6\)](#). Relevant amendments have been made by [S.R. 2005 No. 335](#), [2009 No. 35](#), [2011 No. 155](#), [2013 No. 92](#) and [2014 No. 198](#).

““designated regulatory electricity function” means a function of the Authority conferred by—

- (a) a provision of retained EU law, or
- (b) a condition in a licence under Article 10 of the Electricity Order, as that condition is modified from time to time on or after exit day,

where that function was, immediately before exit day, one of its functions as a regulatory authority designated in accordance with Article 35 of the Electricity Directive;”;

““the designated regulatory electricity objectives” means the objectives set out in Article 36(c) to (h) of the Electricity Directive but read with the following modifications—

- (a) in Article 36(c), for the words from “between” to the end substitute “, including enabling the development of appropriate cross-border transmission capacities to meet demand;”,
- (b) in Article 36(d), omit “, in line with general energy policy objectives,”,
- (c) in Article 36(f), omit “and foster market integration”, and
- (d) in Article 36(g) for “their national market” substitute “the energy market in Northern Ireland;”;

““designated regulatory functions” means any designated regulatory electricity function and any designated regulatory gas function;”;

““designated regulatory gas function” means a function of the Authority conferred by—

- (a) a provision of retained EU law, or
- (b) a condition in a licence under Article 8 of the Gas Order, as that condition is modified from time to time on or after exit day,

where that function was, immediately before exit day, one of its functions as a regulatory authority designated in accordance with Article 39 of the Gas Directive;”;

““the designated regulatory gas objectives” means the objectives set out in Article 40(c) to (h) of the Gas Directive but read with the following modifications—

- (a) in Article 40(c), for the words from “between” to the end substitute “, including enabling the development of appropriate cross-border transmission capacities to meet demand;”,
- (b) in Article 40(d), omit “, in line with general energy policy objectives,”,
- (c) in Article 40(f), omit “and foster market integration”, and
- (d) in Article 40(g) for “their national market,” substitute “the market for gas in Northern Ireland”;

““Great Britain authority” means the Gas and Electricity Markets Authority;”.

**129.**—(1) Article 3A (designation of Authority as national regulatory authority for Northern Ireland) is amended as follows.

(2) For the heading substitute “Exercise of designated regulatory functions etc.”.

(3) Omit paragraph (1).

(4) In paragraph (2), for the words “functions as designated regulatory authority for Northern Ireland” substitute “designated regulatory functions”.

(5) Omit paragraph (3).

**130.** Omit Article 6A.

**131.**—(1) Article 6B (decisions of the Agency for the Cooperation of Energy Regulators and of the European Commission) is amended as follows.

(2) Renumber the existing Article as paragraph (1).

(3) After paragraph (1) insert—

“(2) For the purposes of paragraph (1), a binding decision does not include a decision that is not, or so much of a decision as is not, retained EU law.”.

**132.** In Article 7 (publication by Authority of advice and information about consumer matters), in paragraph (5)(a)(i), after “European Commission” insert “before exit day”.

**133.** In Article 8 (powers of Authority in relation to external matters), in paragraph (1), omit sub-paragraph (b).

**134.**—(1) Article 8A (duty on the Authority to have regard to the need for consultation and co-operation with other authorities) is amended as follows.

(2) In paragraph (1)—

(a) for the words “functions as designated regulatory authority for Northern Ireland” substitute “designated regulatory functions”;

(b) in sub-paragraph (a), for the words from “the Agency” to the end substitute “the Great Britain authority or the regulatory authorities of other countries or territories”;

(c) in sub-paragraph (b)—

(i) for the words from “Agency” to “Member States” substitute “Great Britain authority”;

(ii) for “they” substitute “it”;

(iii) for the words from “their functions” to “the Agency Regulation” substitute “any functions of the Great Britain authority corresponding to the Authority’s designated regulatory functions”.

(3) Omit paragraph (2).

(4) In paragraph (3), omit the definition of “region”.

**135.**—(1) Article 12 (principal objective and general duties of the Department and the Authority in relation to electricity) is amended as follows.

(2) In paragraph (1A)—

(a) for the words “functions as designated regulatory authority for Northern Ireland” substituted “designated regulatory electricity functions”;

(b) for the words from “objectives” to the end substitute “designated regulatory electricity objectives”.

(3) In paragraph (5A)—

(a) in sub-paragraph (a), after “provided” insert “which would, immediately before exit day, have been”;

(b) in sub-paragraph (b) for “in accordance with” substitute “as described in”.

(4) After paragraph (5A) insert—

“(5AA) For the purposes of paragraph (5A), references to Article 15 are to be read as references to that Article with the modification that references to “Member States” are to be read as references to “the Department and the Authority”.”.

(5) Omit paragraphs (5B) and (5C).

**136.**—(1) Article 13 (exceptions from the general duties) is amended as follows.

(2) In paragraph (1B), for the words from “objectives” to the end substitute “designated regulatory electricity objectives”.

(3) In paragraph (4), for “Community obligation” substitute “retained EU obligation”.

**137.**—(1) Article 14 (principal objective and general duties of the Department and the Authority in relation to gas) is amended as follows.

(2) In paragraph (1), for the words from “pursuant” to the end substitute “of the designated regulatory gas objectives”.

(3) Omit paragraph (5B).

**138.** In Article 15 (exceptions from the general duties), in paragraph (4), for “Community obligation” substitute “retained EU obligation”.

**139.**—(1) Article 38 (modification of licences: general provisions) is amended as follows.

(2) In paragraph (1), for the words from “the requirements” to the end substitute “any requirements and prohibitions contained in retained EU law which correspond to prohibitions and requirements in the Electricity Directive”.

(3) In paragraph (2), for the words from “the requirements” to the end substitute “any requirements and prohibitions contained in retained EU law which correspond to prohibitions and requirements in the Gas Directive”.

**140.**—(1) In Article 45 (financial penalties), in paragraph (9)(b), for “pursuant to” substitute “by or under a provision referring to a provision of”.

(2) For the purposes of Article 45 of the Energy (Northern Ireland) Order 2003, the reference in paragraph (1) of that Article to “any provision of a Community Regulation” is to be treated on and after exit day as including a reference to any provision of a Community Regulation (within the meaning given in that Article) as it had effect in EU law at any time before exit day.

**141.** In Article 54B (amounts of electricity specified in certificates), in paragraph (4)(f), for “Community obligation” substitute “retained EU obligation”.

**142.** In Article 55F (interpretation of Articles 52 to 55F), in paragraph (1) omit the definition of “Great Britain authority”.

**143.** In Article 56 (power to amend Part VII), in paragraph (1)—

(a) in sub-paragraph (b)(i), for “Community obligation” substitute “retained EU obligation”;

(b) in sub-paragraph (b)(ii), for “member State” substitute “country”.

**144.** In Article 62 (reasons for decisions), in paragraph (1)(g), for “functions as designated regulatory authority for Northern Ireland” substitute “designated regulatory functions”.

**145.** In Article 63 (general restrictions on disclosure of information), in paragraph (4)(i), for “Community obligation” substitute “retained EU obligation”.

### **The Electricity (Single Wholesale Market) (Northern Ireland) Order 2007**

**146.** In the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007<sup>(6)</sup>, in Article 10 (exceptions from the general duties), in paragraph (4), for “EU obligation” substitute “retained EU obligation”.

### **The Electricity (Priority Dispatch) Regulations (Northern Ireland) 2012**

**147.** The Electricity (Priority Dispatch) Regulations (Northern Ireland) 2012<sup>(7)</sup> are amended as follows.

**148.** In regulation 3 (existing transmission and distribution licences), omit “Article 16(2)(c) of [Directive 2009/28/EC](#) and Article 15(5)(c) of [Directive 2012/27/EU](#) and, in particular,”.

**149.** In regulation 5 (interpretation), in paragraph (1), omit the definition of “[Directive 2012/27/EU](#)”.

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<sup>(6)</sup> S.I. 2007 No. 913 (N.I. 7). Article 10(4) was amended by [S.I. 2011/1043](#).

<sup>(7)</sup> [S.R. 2012 No. 385](#). Relevant amendments were made by [S.R. 2014 No. 198](#).