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STATUTORY RULES OF NORTHERN IRELAND

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**2013 No. 92**

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

**PART III**

**AMENDMENT TO GAS (NORTHERN IRELAND) ORDER 1996**

**Closed distribution systems**

**16.** After Article 7 insert—

**“Closed distribution systems**

**7A.—(1)** A conveyance exemption holder may apply to the Authority for any distribution system through which gas is conveyed under his exemption to be classified as a closed distribution system.

(2) Where the Authority has received an application under paragraph (1) in relation to any distribution system, it must classify that system as a closed distribution system if the Authority considers that all of the following criteria are met, that is to say—

- (a) the distribution system is not used for the purpose of supplying gas to household customers, or is used to supply fewer than 50 household customers who—
    - (i) are employees of, or work for or otherwise render services to, the conveyance exemption holder or a person related to the conveyance exemption holder; and
    - (ii) take a supply of gas that is wholly or mainly from a gas production site embedded in the distribution system;
  - (b) the distribution system is wholly or mainly used for distributing gas within a geographically self contained industrial, commercial or shared services site and is not integrated with any pipeline system operated by the holder of a licence under Article 8(1)(a); and
  - (c) the distribution system is wholly or mainly used either—
    - (i) by system users whose businesses, for technical or safety related reasons, have operational or production premises that are integrated with those of other system users of that distribution system; or
    - (ii) for the purpose of supplying gas to premises owned or occupied by the conveyance exemption holder or by a person related to the conveyance exemption holder.
- (3) An application under paragraph (1) must—
- (a) identify the distribution system to which the application relates;
  - (b) include any evidence available to the applicant in support of the application; and

- (c) provide any further information or documents that the Authority may request in respect of the application.
- (4) The Authority must decide whether to classify a distribution system as a closed distribution system as soon as is reasonably practical after the Authority has received—
  - (a) the application under paragraph (1); and
  - (b) any further information or documents requested by it under paragraph (3)(c).
- (5) The Authority must notify the person making the application under paragraph (1) of its decision as soon as is reasonably practicable after that decision has been made.

**7B.—(1)** Any condition specified in an order under Article 7(1)(c) in respect of a conveyance exemption which requires the approval of the Authority for the methodology of calculating a system charge in relation to a distribution system or which imposes any obligation on the holder of the exemption in relation to that approval, shall not apply in relation to any closed distribution system.

(2) Where the holder of a conveyance exemption who operates or has control of a closed distribution system receives an expression of interest from a customer who owns or occupies premises that are connected to the system, he must—

- (a) inform that customer that the distribution system in question is a closed distribution system; and
- (b) within 7 working days, beginning on the day on which he receives the expression of interest, by notice inform any third party supplier identified in the expression of interest that the distribution system in question is a closed distribution system.

(3) Where a customer has served an expression of interest in respect of a closed distribution system and—

- (a) the customer, or a third party supplier identified in that expression of interest, serves a notice on the holder of the exemption relating to that distribution system requesting that the methodology for a proposed system charge be submitted to the Authority for approval; and
- (b) at the time of receiving the request the holder of the exemption has not received any confirmation that the customer has entered into a contract with a third party, then paragraph (4) applies.

(4) From the time the holder of the conveyance exemption receives the request referred to in paragraph (3)(a), the conditions referred to in paragraph (1) shall have effect as if the distribution system in question were not a closed distribution system.

(5) Where a customer who owns or occupies premises that are connected to a closed distribution system has served a notice on the holder of a conveyance exemption relating to that system that he has entered into a contract with a third party supplier (“the confirmed third party supplier”) and—

- (a) the customer or the confirmed third party supplier serves on the holder of the exemption a notice requesting that the methodology for use of the system charge that is being applied be submitted to the Authority for approval; and
- (b) the methodology for calculating the charge has not previously been approved by the Authority,

paragraphs (6) to (11) apply.

(6) The holder of the exemption must, within 20 working days, beginning with the day on which he receives the request under paragraph (5)—

- (a) provide the Authority with a charging statement in respect of the methodology for any system charge applied at the time the request was made and such other information or documents as the Authority may specify; and
- (b) provide the customer and the confirmed third party supplier with a copy of that charging statement.

(7) Where the Authority has requested further documents or information in accordance with paragraph (6)(a) at a time when there are fewer than 10 working days remaining in the 20 working day period mentioned in that sub-paragraph, those further documents or information must be provided within 10 working days beginning with the day on which the holder of the exemption received the request for further documents or information.

(8) Where the holder of the exemption has complied with paragraph (6)(a), the Authority must as soon as is reasonably practicable—

- (a) decide whether to approve the methodology set out in the charging statement; and
- (b) notify the conveyance exemption holder and the confirmed third party supplier of its decision.

(9) Where the Authority does not approve the methodology, it must give reasons for that decision.

(10) Where the Authority has notified the holder of the exemption of a decision that it does not approve the methodology, that holder must not continue to impose a system charge except where the Authority has considered the methodology for such a charge and has approved it.

(11) Where the Authority has not approved a methodology submitted under paragraph (6), the holder of the exemption may—

- (a) submit to the Authority a charging statement containing details of a revised methodology;
- (b) provide the Authority with such other information and documents as the Authority may specify; and
- (c) send a copy of the charging statement to the customer and the confirmed third party supplier.

(12) If the holder of the exemption takes the steps mentioned in paragraph (11), paragraphs (8) and (9) apply as if he had complied with paragraph (6).

**7C.**—(1) If, after a system has been classified as a closed distribution system, there is a change of circumstances which affects or might affect whether the system continues to meet the criteria set out in Article 7A(2), the holder of the exemption relating to the distribution system must notify the Authority of the change as soon as is reasonably practicable after it occurs.

(2) If the holder of the exemption wishes the system to continue to be classified as a closed distribution system, he must include in the notice an application to the Authority asking the Authority to confirm the classification.

(3) Any application under paragraph (2) must—

- (a) identify the distribution system to which the application relates;
- (b) include any evidence available to the applicant in support of the application; and
- (c) provide any further information or documentation that the Authority may request in respect of the application.

(4) Where the Authority has received a notice under paragraph (1) it must as soon as is reasonably practicable either—

- (a) revoke the classification; or
  - (b) confirm the classification if—
    - (i) the notice includes an application under paragraph (2);
    - (ii) the Authority has received any further information or documents requested by it; and
    - (iii) the Authority considers that the criteria set out in Article 7A(2) continue to be met.
- (5) The Authority must notify the applicant of its decision under this Article as soon as is reasonably practicable after that decision has been made.

**7D.—(1) In Article 7A to 7C—**

“charging statement” in relation to a conveyance exemption holder who proposes to impose a system charge means a statement containing details of the proposed methodology for calculating the system charge;

“closed distribution system” means a system classified as such by the Authority under Article 7A(2);

“conveyance exemption” means an exemption from Article 6(1)(a) and “conveyance exemption holder” means a person who carries on an activity under the authority of the exemption;

“customer” means a person who purchases gas for the person’s own consumption;

“distribution system” means a pipeline system by means of which the person who operates or has control of the system conveys gas in circumstances such as that that person is carrying on an activity which amounts to the distribution of gas within the meaning given by Article 2(5) of the Directive;

“expression of interest” in relation to the holder of a conveyance exemption means a notice served on that holder by a customer who—

- (a) owns or occupies premises which are connected to any distribution system to which the exemption relates;
- (b) takes a supply of gas through that system from the holder or a person related to the holder,

which expresses the customer’s interest in taking a supply of gas from a third party supplier through the system, which contains or is accompanied by evidence that at least one third party supplier would be willing to supply the customer with gas through that system and which identifies any such third party;

“gas producer” means a gas undertaking carrying out the function of production mentioned in Article 2(1) of the Directive;

“gas production site” means a site at which a person carries out an activity by virtue of which he is a gas producer;

“household customer” means a customer who purchases gas for consumption by the customer’s own household;

“system user” in relation to a distribution system means—

- (a) a person supplying gas that is being conveyed by means of that distribution system; or
- (b) a customer who owns or occupies premises that are connected to that distribution system;

“third party supplier” in relation to a conveyance exemption holder means any person authorised by licence or exemption to supply gas who is not or is not related to the conveyance exemption holder;

“system charge” in relation to a conveyance exemption holder means a charge which—

- (a) is levied by the holder on a third party supplier identified in an expression of interest that has been served on the holder; and
- (b) is for use of the distribution system to which the expression of interest relates.

(2) For the purposes of Article 7A to 7C and the definitions in paragraph (1), a person (“A”) is related to another person (“B”) where A is—

- (a) an undertaking in which B has a participating interest within the meaning of Section 421A of the Financial Services and Markets Act 2000<sup>(1)</sup>;
- (b) a holding company of B;
- (c) a subsidiary of B; or
- (d) a subsidiary of a holding company of B.

(3) For the purposes of paragraph (2), “holding company” and “subsidiary” are to be construed in accordance with section 1159 of the Companies Act 2006<sup>(2)</sup>.

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(1) 2000 c.8 as amended by S.I. 2008/948  
(2) 2006 c. 46