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## STATUTORY INSTRUMENTS

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# 1996 No. 275

## The Gas (Northern Ireland) Order 1996

### PART II

#### GAS SUPPLY AND ASSOCIATED ACTIVITIES

##### *Licensing of supply of gas and associated activities*

#### **Prohibition on unlicensed supply of gas and associated activities**

6.—(1) Subject to Article 7, a person who—

- (a) conveys gas from one place to another;
- (b) stores gas in a gas storage facility; or
- (c) supplies gas to any other person or to any premises,

shall be guilty of an offence unless he is authorised to do so by a licence.

(2) A person guilty of an offence under this Article shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(3) No proceedings shall be instituted in respect of an offence under this Article except by or on behalf of the Department or the Director.

[<sup>F1</sup>(6) For the purposes of this Order a person stores gas in a gas storage facility if (and only if) that person is the operator of that facility.]

**F1** [Art. 6\(6\)](#) added (21.3.2011) by [Energy Act \(Northern Ireland\) 2011 \(c. 6\)](#), **ss. 15, 36(1)**; S.R. 2011/95, **art. 2**

#### **Exemptions from Article 6**

7.—(1) The Department may, after consultation with the Director, by order grant exemption from sub-paragraph (a), (b) or (c) of Article 6(1)—

- (a) either to a person or to persons of a class;
- (b) either generally or to such extent as may be specified in the order; and
- (c) either unconditionally or subject to such conditions as may be so specified.

(2) An exemption granted to persons of a class, and the revocation of such an exemption, shall be published in such manner as the Department considers appropriate for bringing it to the attention of persons likely to be affected.

(3) An exemption, unless previously revoked in accordance with any term contained in the exemption, shall continue in operation for such period as may be specified in or determined by or under the exemption.

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(4) Without prejudice to the generality of paragraph (1)(c), conditions included by virtue of that sub-paragraph in an exemption may require any person carrying on any activity in pursuance of the exemption—

- (a) to comply with any direction given by the Department or the Director as to such matters as are specified in the exemption or are of a description so specified;
- (b) except in so far as the Department or the Director consents to his doing or not doing them, not to do or to do such things as are specified in the exemption or are of a description so specified; and
- (c) to refer for determination by the Department or the Director such questions arising under the exemption as are specified in the exemption or are of a description so specified.

(5) If any condition of an exemption granted to persons of a class is not complied with by any person of that class, the Department may give to that person a direction declaring that the exemption is revoked, so far as relating to that person, to such extent and as from such date as may be specified in the direction.

VALID FROM 12/04/2013

#### [<sup>F2</sup>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

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- (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.

**F2** Arts. 7A-7D inserted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\)](#), **reg. 16**

VALID FROM 12/04/2013

- 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—

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- (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).

**F2** Arts. 7A-7D inserted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\)](#), [reg. 16](#)

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**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.

**F2** Arts. 7A-7D inserted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\)](#), **reg. 16**

VALID FROM 12/04/2013

**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;

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“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;
- (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.]

**F2** Arts. 7A-7D inserted (12.4.2013) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2013 (S.R. 2013/92), reg. 16

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## Licences authorising supply, etc.

8.—(1) The [<sup>F3</sup>Authority] may grant a licence authorising any person to do all or any of the following, namely—

- (a) to convey gas from one place to another in an area authorised by the licence;
- (b) to store gas in a specified gas storage facility;
- (c) to supply gas to specified persons or premises.

In this paragraph and paragraph (2) “specified” means specified in the licence, or of a class or description, or in an area, so specified.

(2) The [<sup>F4</sup>Authority] may—

- (a) extend a licence granted under paragraph (1) (a) or (c) by increasing the area authorised by the licence; or
- (b) extend a licence granted under paragraph (1)(b) by adding to the specified gas storage facilities;
- (c) extend a licence granted under paragraph (1)(c) by adding to the specified persons or premises.

(3) An application for a licence or extension shall be made in the prescribed manner and shall be accompanied by such fee (if any) as may be prescribed; and within 14 days from the making of such an application, the applicant shall publish a copy of the application in the prescribed manner.

(4) Before granting a licence or extension under this Article, [<sup>F5</sup>the Authority] shall give notice—

- (a) stating that [<sup>F6</sup>the Authority] proposes to grant the licence or extension;
- (b) stating the reasons why it is proposed to grant the licence or extension; and
- (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed licence or extension may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

[<sup>F7</sup>(4A) A licence shall not be granted or extended unless the applicant therefor and, if appropriate, the construction or operation of any pipeline, facility or associated apparatus used or to be used in connection with any activity carried out under the licence meets the published criteria.]

(5) A licence or extension shall be in writing and, unless previously revoked in accordance with any term contained in it, a licence shall continue in force for such period as may be specified in or determined by or under the licence.

(6) As soon as practicable after granting or extending a licence, [<sup>F8</sup>the Authority] shall give notice stating that the licence or extension has been granted.

(7) A notice under paragraph (4) or (6) shall be given by publishing the notice in such manner as [<sup>F9</sup>the Authority] considers appropriate for bringing it to the attention of persons likely to be affected by the grant or extension of the licence.

[<sup>F10</sup>(7A) Where <sup>F11</sup>. . . the Authority refuses to grant to any applicant a licence or an extension, the <sup>F11</sup>. . . Authority <sup>F12</sup>. . . shall by notice in writing—

- (a) inform the person making the application of the fact;
- (b) give him the reasons for that refusal; and
- (c) inform him of any right to challenge the refusal.

(7B) In paragraph (4A) “published criteria” means the criteria determined by the Department from time to time for the purposes of and in accordance with—

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- (a) Article 4(2) of the Directive; or
- (b) in relation to the construction or operation of a direct line (within the meaning of the Directive), [<sup>F13</sup>Article 38(2)] of the Directive,
- and published by it.
- (7C) Paragraph (4A) shall not apply in relation to any—
- (a) direct line used for a supply of gas to which Article 1 of the Commission Decision for the time being applies; or
- (b) direct line, pipeline or facility used for a supply of gas to which Article 2 of the Commission Decision for the time being applies.]
- (8) Neither the requirement to consult imposed by paragraph (1) nor paragraphs (3) and (4) shall apply to the granting of any licences which are granted in the period of 3 months beginning with the day on which this Article comes into operation.
- (9) Any sums received by the Director under this Article shall be paid into the Consolidated Fund.

<b>F3</b>	Words in art. 8(1) substituted (15.4.2011) by <a href="#">Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155)</a> , <b>reg. 58</b>
<b>F4</b>	Words in art. 8(2) substituted (15.4.2011) by <a href="#">Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155)</a> , <b>reg. 58</b>
<b>F5</b>	Words in art. 8(4) substituted (15.4.2011) by <a href="#">Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155)</a> , <b>reg. 59(a)</b>
<b>F6</b>	Words in art. 8(4)(a) substituted (15.4.2011) by <a href="#">Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155)</a> , <b>reg. 59(b)</b>
<b>F7</b>	Art. 8(4A) inserted (1.10.2006) by <a href="#">Gas Order 1996 (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/358)</a> , <b>reg. 5(1)</b>
<b>F8</b>	Words in art. 8(6) substituted (15.4.2011) by <a href="#">Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155)</a> , <b>reg. 60</b>
<b>F9</b>	Words in art. 8(7) substituted (15.4.2011) by <a href="#">Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155)</a> , <b>reg. 61</b>
<b>F10</b>	Art. 8(7A) - (7C) inserted (1.10.2006) by <a href="#">Gas Order 1996 (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/358)</a> , <b>reg. 5(2)</b>
<b>F11</b>	Words in art. 8(7A) omitted (15.4.2011) by virtue of <a href="#">Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155)</a> , <b>reg. 62</b>
<b>F12</b>	Words in art. 8(7A) omitted (15.4.2011) by virtue of <a href="#">Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155)</a> , <b>reg. 62</b>
<b>F13</b>	Words in art. 8(7B)(b) substituted (15.4.2011) by <a href="#">Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155)</a> , <b>reg. 86</b>

## PROSPECTIVE

### [<sup>F14</sup>Licences under Article 8(1)(a)]

**8A.—(1)** A licence under Article 8(1)(a) may authorise the holder to participate in the conveyance of gas in any area, or only in an area specified in the licence.

(2) The Authority may, with the consent of the holder of a licence under Article 8(1)(a), modify any term included in the licence in pursuance of paragraph (1).

(3) Conditions included in a licence under Article 8(1)(a) by virtue of Article 10(1)(a) may (without prejudice to the generality of that sub-paragraph)—



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- (a) require the licence holder not to carry on an activity which he would otherwise be authorised by the licence to carry on; or
- (b) restrict where he may carry on an activity which he is authorised by the licence to carry on.]

**F14** Art. 8A inserted (prosp.) by [Energy \(Northern Ireland\) Order 2003 \(S.I. 2003/419 \(N.I. 6\)\)](#), **arts. 1(2), 30(5)**

### [<sup>F15</sup>**The conveyance of gas: requirement to be certified as independent**

**8B.**—(1) A person who conveys gas through a gas transmission pipe-line and holds a licence under Article 8(1)(a) immediately before the coming into operation of the 2011 Regulations must, on and after the relevant date, ensure that he is certified at all times when he acts under the authority of that licence.

(2) Any person who intends to convey gas through a gas transmission pipe-line and who is granted a licence under Article 8(1)(a) after the coming into operation of the 2011 Regulations must ensure that he is certified at all times when he acts under the authority of the licence.

(3) In paragraph (1) the “relevant date” in respect of a person is 3rd March 2012 or any later date before 4th March 2013 which the Authority specifies under paragraph (4) or (5) in respect of that person.

(4) The Authority may specify a later date in respect of a person if—

- (a) the person has asked the Authority to specify a later date;
- (b) the person is not, and is not part of, a vertically integrated undertaking; and
- (c) no senior officer of the person is also a senior officer of a relevant producer or supplier.

(5) The Authority may also specify a later date in respect of a person if the Authority decides that, for reasons beyond its and the person's control, the Authority will not reasonably be able to make a final decision before 3rd March 2012 as to whether or not to certify the person.

(6) For the purposes of this Article, a person conveys gas through a gas transmission pipe-line where he—

- (a) makes a gas transmission pipe-line available for use for the purposes of the conveyance of gas; or
- (b) makes such a pipe-line available and coordinates and directs the flow of gas into and through such pipe-line.

**F15** Arts. 8B-8L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 12**

### **Application for certification**

**8C.**—(1) An application for certification must be made—

- (a) in writing to the Authority; and
- (b) before such date and in such form and contain such information as the Authority may specify in writing.

(2) If the application is made on or after 3rd March 2013 and either—

- (a) the applicant is; or

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- (b) the application is made on the basis of the third certification ground under Article 8F(5) and the applicant nominates as an independent system operator, a person from a third country or a person controlled by a person from a third country, the Authority must notify the Department and the European Commission as soon as is reasonably practicable.
- (3) The Authority may request from an applicant for certification any further information the Authority thinks is relevant to the application, and the applicant must supply that information if—
- (a) it is in the applicant's possession or control; or
  - (b) it is information which the applicant could reasonably be expected to obtain.
- (4) The Authority may request a relevant producer or supplier, and any related conveyance licensee, for any information the Authority considers relevant to an application for certification, and the person so requested must supply that information if—
- (a) it is in his possession or control; or
  - (b) it is information which he could reasonably be expected to obtain.
- (5) A person requested to supply information under paragraph (3) or (4) must do so by the date specified by the Authority in the request.

**F15** Arts. 8B-8L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 12**

### Report where applicant connected with a country outside the European Economic Area

- 8D.**—(1) This Article applies if the Department is notified by the Authority under Article 8C(2) that an application has been made by, or nominating as an independent system operator, a person from a third country or a person controlled by a person from a third country.
- (2) The Department must prepare a report on whether the security of gas supplies in the United Kingdom and the European Economic Area would be put at risk by the certification of the applicant.
- (3) In preparing the report, the Department must take into account—
- (a) any relevant international law; and
  - (b) any relevant agreement between the government of the United Kingdom and the government of the third country in question.
- (4) The Department must send the report to the Authority within the 6 weeks beginning with the day on which the notification under Article 8C(2) is received by it.

**F15** Arts. 8B-8L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 12**

### Certification

- 8E.**—(1) The Authority must, within the 4 months beginning with the day on which it receives an application for certification, make a preliminary decision as to whether it should certify the applicant.
- (2) If—
- (a) the Authority has asked an applicant or a relevant producer or supplier or related conveyance licensee for information under Article 8C(3) or (4); and
  - (b) the information has not been supplied by the date specified by the Authority under Article 8C(5),

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then the period of 4 months referred to in paragraph (1) shall be extended by the period of delay in supplying such information.

(3) As soon as is reasonably practicable after making the preliminary decision under paragraph (1), the Authority must notify the decision and the reasons for it to—

- (a) the applicant;
- (b) any related conveyance licensee;
- (c) the Department; and
- (d) the European Commission.

(4) The Authority must enclose with the notification under paragraph (3)(a), (b) or (d) a copy of any report which the Department has prepared under Article 8D in respect of the applicant and which the Authority receives before giving the notification.

(5) Article 3 of the Gas Regulation sets out the obligation to make a final decision, together with related processes, time limits, matters to be taken into account and conditions.

(6) As soon as is reasonably practicable after making the final decision in any case the Authority must notify the decision and the reasons for it to—

- (a) the applicant;
- (b) any related conveyance licensee;
- (c) the Department; and
- (d) the European Commission.

**F15** Arts. 8B-8L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), [reg. 12](#)

## Grounds for certification

**8F.**—(1) This Article applies to—

- (a) a preliminary decision under Article 8E as to whether an applicant should be certified;
- (b) a final decision under Article 3 of the Gas Regulation as to whether to certify an applicant.

(2) Subject to paragraph (7), the Authority may only decide that the applicant should be certified, or decide to certify the applicant, if one of the following four grounds (“the certification grounds”) applies.

(3) The first certification ground is that the ownership unbundling requirement in Article 8G is met in relation to the applicant and to any related conveyance licensee.

(4) The second certification ground is that—

- (a) the applicant has applied for a derogation from the ownership unbundling requirement on the grounds in paragraphs (1) and (2) of Article 14 of the Directive (independent system operator);
- (b) the applicant has nominated an independent system operator for designation in accordance with those paragraphs; and
- (c) the Authority—
  - (i) has determined that the requirements of those paragraphs and of paragraphs (1) and (2) of Article 15 of the Directive (unbundling of transmission system owners and storage system operators) are met; and
  - (ii) is minded to designate the nominated independent system operator.

(5) The third certification ground is that—

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- (a) the applicant holds a licence under Article 8(1)(a);
- (b) the applicant has applied for a derogation from the ownership unbundling requirement on the grounds in Chapter IV of the Directive (independent transmission operator); and
- (c) the Authority has determined that the requirements of that Chapter are met.

(6) The fourth certification ground is that the applicant has been granted an exemption (effective by virtue of the conditions which apply in his licence, or by way of exemption under Article 7(1)) in accordance with Article 36 of the Directive (new infrastructure) and remains entitled to the benefit of it.

(7) The Authority may make a preliminary decision to certify an applicant where it is satisfied that the certification ground to which his application relates applies in the case of the applicant or would apply if particular qualification measures were taken and that—

- (a) those qualification measures are within the powers of the Authority to impose under regulations 13 and 94 of the 2011 Regulations or any other powers of the Authority under this Order or the Energy (Northern Ireland) Order 2003, and the Authority is minded so to exercise those powers; or
- (b) the Authority is otherwise satisfied that such qualification measures will be taken.

(8) But, regardless of whether a certification ground applies under paragraph (2), the Authority must not certify the applicant—

- (a) if, on the basis of an opinion expressed by the European Commission under Article 11 of the Directive (certification in relation to persons from countries outside the European Economic Area), the Authority considers that the certification of the applicant would put at risk the security of gas supplies in the European Economic Area;
- (b) 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 or the European Economic Area.

**F15** Arts. 8B-8L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), [reg. 12](#)

### **The ownership unbundling requirement**

<sup>F15</sup>**8G.**—(1) For the purposes of Article 8F(3), the ownership unbundling requirement is met by an applicant for certification or (as the case may be) a related conveyance licensee (“a relevant person”) if the Authority considers that each of the following five tests is passed.

- (2) The first test is that the relevant person—
  - (a) does not control a relevant producer or supplier;
  - (b) does not have a majority shareholding in a relevant producer or supplier; and
  - (c) will not, on or after the relevant date (within the meaning of Article 8B(3)) exercise any shareholder rights it holds, or becomes the holder of, in relation to a relevant producer or supplier.
- (3) For the purposes of paragraph (2)(c), the Authority is entitled to think that the relevant person will not exercise any shareholder rights it holds, or becomes the holder of, if the relevant person has given an undertaking that it will not exercise those shareholder rights.
- (4) The second test is that the relevant person is not controlled by a person who controls a relevant producer or supplier.
- (5) But even where the second test is not passed, the Authority is entitled to treat it as passed if—

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- (a) the control over the relevant person was gained through the exercise of a right conferred as a condition of the provision of financial support or a guarantee in relation to the relevant person's business; or
  - (b) the control over the relevant producer or supplier was gained through the exercise of such a right conferred in relation to the business of the relevant producer or supplier.
- (6) The third test is that the relevant person is not controlled by a person who has a majority shareholding in a relevant producer or supplier.
- (7) But even where the third test is not passed, the Authority is entitled to treat it as passed if—
- (a) the control over the relevant person was gained through the exercise of a right conferred as a condition of the provision of financial support or a guarantee in relation to the relevant person's business; or
  - (b) the majority shareholding in the relevant producer or supplier was gained through the exercise of such a right conferred in relation to the business of the relevant producer or supplier.
- (8) Where the Authority treats the second or third test as having been passed only by virtue of paragraph (5) or (7), it must specify a time limit after which it will cease to treat that test as having been passed; and it may extend the time limit if it thinks it necessary or expedient to do so.
- (9) Paragraphs (10) and (11) apply where the Authority is entitled to treat the second or third test as having been passed only by virtue of paragraph (5) or (7).
- (10) In deciding whether to treat the test as having been passed, the Authority—
- (a) must take into account—
    - (i) whether the relationship (direct or indirect) between the relevant person and the relevant producer or supplier has led or might lead the relevant person to discriminate in favour of the relevant producer or supplier; and
    - (ii) the length of time for which that is likely to continue to be so; and
  - (b) may, in particular take into account any information or undertakings given to the Authority by the relevant person, the relevant producer or supplier or the person who controls the relevant person and controls or has a majority shareholding in the relevant producer or supplier.
- (11) The information and undertakings that may be taken into account under paragraph (10) (b) include information and undertakings regarding any measures that have been or will be put in place to ensure the effective separation of the business of the relevant person and the business of the relevant producer or supplier.
- (12) The fourth test is that, where the relevant person is a company, partnership or other business, none of its senior officers has been, or may be, appointed by a person who—
- (a) controls a relevant producer or supplier other than an electricity generation undertaking or electricity supply undertaking; or
  - (b) has a majority shareholding in a relevant producer or supplier other than an electricity generation undertaking or electricity supply undertaking.
- (13) The fifth test is that, where the relevant person is a company, partnership or other business, none of its senior officers is also a senior officer of a relevant producer or supplier other than an electricity generation undertaking or electricity supply undertaking.]

**F15** Arts. 8B-8L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), [reg. 12](#)

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## Designation for the purposes of EU gas legislation

**8H.**—(1) This Article applies for any period during which a person—

- (a) holds a licence under Article 8(1)(a); and
- (b) is certified.

(2) If the person is certified on the first or third certification ground in Article 8F, the Department shall designate that person as a gas transmission system operator for the purposes of Article 10(2) of the Directive (designation of transmission system operators).

(3) If the person is certified on the second certification ground in Article 8F, the Department shall designate the independent system operator nominated in the application for certification as a gas transmission system operator for the purposes of that Article.

(4) As soon as is reasonably practicable after a person is designated by virtue of this Article, the Department must give notice of the designation to—

- (a) the person so designated;
- (b) the applicant (if different);
- (c) the Authority; and
- (d) the European Commission.

(5) Where, in the case of a person certified on the first certification ground, there is a related conveyance licensee, conditions included pursuant to Article 10A(1) in the licences under Article 8(1)(a) of the certified person and the related conveyance licensee may make provision for determining which of them is to act as transmission system operator for the purposes of any provision of the Gas Regulation and any designation under this Article is without prejudice to any such provision.

**F15** Arts. 8B-8L inserted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 12**

## Monitoring and review of certification

**[<sup>F15</sup>8I.**—(1) The Authority must monitor, in respect of each certified person, whether the grounds on which the person was certified continue to apply.

(2) Where, for the purposes of certifying any person, the Authority has treated the second or third test in Article 8G as having been passed only by virtue of paragraph (5) or (7) of that Article, then where after the expiry of the time limit provided under paragraph (8) of that Article it has ceased to treat that test as having been passed by such virtue, the certification shall be withdrawn unless the Authority reviews the certification and is satisfied that the test in question is otherwise passed.

(3) If, on or after 3rd March 2013, as a result of information it has received or obtained, the Authority considers that a person from a third country has taken or may take control of a certified person or a person designated as independent system operator, the Authority must, as soon as is reasonably practicable, notify the information to the Department and the European Commission.

(4) The Authority may review the final certification for any person if—

- (a) the certified person or any related conveyance licensee notifies it of any event or circumstance which may affect the grounds on which that person was certified; or
- (b) for any other reason the Authority considers that the grounds for the certification of that person may no longer apply.

(5) A review under paragraph (2) or (4) is to be carried out within the 4 months beginning with—

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- (a) if paragraph (4)(a) applies, the day on which the Authority receives the notification under that paragraph;
  - (b) if the review is in pursuance of paragraph (2), the expiry of the time limit referred to in that paragraph; or
  - (c) otherwise, the first day on which the Authority considers that the grounds for certification may no longer apply.
- (6) The Authority must also review a final certification if the European Commission asks it to do so.
- (7) A review under paragraph (6) is to be carried out within the 4 months beginning with the day on which the Authority receives the request from the European Commission.
- (8) But where the Authority considers that the circumstances giving rise to the review of the certification of any person under paragraph (4) or (6) represent or result from the contravention of a relevant condition or requirement for the purposes of Article 41 of the Energy (Northern Ireland) Order 2003, by a related conveyance licensee, the Authority may suspend the carrying out of the review while the Authority is taking steps in relation to such contravention pursuant to Part VI of that Order and during any period allowed to the related conveyance licensee for complying with any enforcement order.
- (9) As soon as is reasonably practicable after beginning a review under this Article, the Authority must notify the certified person to whom the review relates and any related conveyance licensee that the review is being carried out and the reasons for it.
- (10) The Authority may ask the certified person for any information the Authority thinks is relevant to the review, and the person must supply the information if—
- (a) it is in the certified person's possession or control; or
  - (b) it is information which the certified person could reasonably be expected to obtain.
- (11) The Authority may ask a relevant producer or supplier or related conveyance licensee for any information the Authority thinks is relevant to a review under this Article, and the relevant producer or supplier or related conveyance licensee must supply that information if—
- (a) it is in the possession or control of the relevant producer or supplier or related conveyance licensee; or
  - (b) it is information which the relevant producer or supplier or related conveyance licensee could reasonably be expected to obtain.
- (12) A person required to supply information under paragraph (10) or (11) must do so by any deadline specified by the Authority in the request.]

**F15** Arts. 8B-8L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), [reg. 12](#)

### **Report as to any connection of a certified person with a country outside the European Economic Area**

**8J.**—(1) This Article applies if the Department is notified by the Authority under Article 8I(3) that a person from a third country has taken or may take control of a certified person or (in relation to a certified person) a person designated as an independent system operator.

(2) The Department must prepare a report on whether the security of gas supplies in the United Kingdom and the European Economic Area would be put at risk by the continued certification of the person.

(3) In preparing the report, the Department must take into account—

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- (a) any relevant international law; and
  - (b) any relevant agreement between the government of the United Kingdom and the government of the third country in question.
- (4) The Department must prepare the report and send it to the Authority within the 6 weeks beginning with the day on which the notification is received.

**F15** Arts. 8B-8L inserted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), reg. 12

### Continuation or withdrawal of certification

**8K.**—(1) Where the Authority reviews under Article 8I whether the grounds for the certification of a person apply or continue to apply, it may, within the review period, make a preliminary decision that either—

- (a) the certification should be continued on the certification ground in question; or
- (b) the certification should be withdrawn.

(2) If the Authority does not make a decision under paragraph (1) within the review period, it is to be taken as having decided at the end of the review period that the certification should be continued on the certification ground in question.

(3) As soon as is reasonably practicable after a preliminary decision is made (or taken to be made) under this Article, the Authority must—

- (a) notify the European Commission of the decision; and
- (b) enclose the information it considers relevant to the decision.

(4) Article 3 of the Gas Regulation sets out an obligation to make a final review decision, together with related processes, time limits, matters to be taken into account and conditions.

(5) Paragraphs (6) to (8) apply in relation to the Authority's final decision under Article 3 of the Gas Regulation whether or not to confirm the certification.

(6) As soon as is reasonably practicable after making the final decision, the Authority must notify the decision and the reasons for it to—

- (a) the person in relation to whom the review was carried out;
- (b) any related conveyance licensee;
- (c) the Department; and
- (d) the European Commission.

(7) If the final decision is to continue the certification the person in question is to be taken as continuing to be certified by the Authority.

(8) Otherwise, the person is to be taken as no longer certified.

(9) Article 8F(8)(a) and (b) applies in relation to a decision mentioned in this Article as it applies in relation to a decision mentioned in Article 8F(1), but as if the reference in Article 8F(8)(b) to a report under Article 8D were a reference to a report under Article 8J.]

**F15** Arts. 8B-8L inserted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), reg. 12



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## Interpretation

[<sup>F15</sup>8L.—(1) In Articles 8B to 8K and this Article—

“certification ground” shall be construed in accordance with Article 8F(2);

“certified” means, in relation to any person, certified in accordance with Article 8E or continued to be certified in accordance with Article 8K;

“control”, in relation to one person having control over another, has the meaning given in Article 2(36) of the Directive, but in determining whether one person (“person A”) controls another person (“person B”) no account is to be taken of any power to exercise a contractual or other right which would give person A decisive influence over person B where the right was conferred as a condition of the provision of any financial support or guarantee by person A in relation to the business of person B; and references to one person controlling another are to be interpreted accordingly;

“electricity generation undertaking” means a person who generates electricity for the purpose of giving a supply to any premises or enabling a supply to be so given;

“electricity supply undertaking” means a person who supplies electricity to any premises;

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

“gas supply undertaking” means a person who sells gas to one or more customers, including by the supply to any premises of gas which has been conveyed to those premises through pipes;

“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;

“gas transmission pipe-line” means a gas pipe-line used for the purposes of transmission within the meaning of the Directive;

“licence” means—

- (a) in relation to an electricity generation undertaking or an electricity supply undertaking, a licence under Article 10(1)(a) or (c) of the Electricity (Northern Ireland) Order 1992; and
- (b) in relation to a gas supply undertaking, a licence under Article 8(1)(c);

“majority shareholding” means a simple majority of shares;

“person from a third country” means any person the Authority thinks is a person from a third country;

“qualification measures” in relation to an applicant for certification, means measures taken or arrangements made to ensure that the certification ground to which his application relates applies in his case;

“related conveyance licensee” means, in relation to an applicant for certification or a certified person, any other person (including a person nominated or designated as independent system operator for the purposes of the second certification ground) who—

- (a) holds; or
- (b) in the case of an applicant for certification would, pursuant to any qualification measures proposed in the application, hold, a licence under Article 8(1)(a) under which that person co-ordinates, and directs, the flow of gas into and through a gas transmission pipe-line of the applicant or certified person;

“review period” in relation to a review under Article 8I, means the period specified in paragraph (5) or (7) of that Article as extended by any period of suspension under paragraph (8) of that Article;

“senior officer” means—

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- (a) in relation to a company, a director;
- (b) in relation to a partnership, a partner;
- (c) in relation to any other business, a person holding a position equivalent to that of a director or partner;

“shareholder right”, in relation to a company, means a right conferred by the holding of a share in the company’s share capital—

- (a) to vote at general meetings of the company; or
- (b) to appoint or remove a member of the company’s board of directors;

“third country” means a country that is not, and is not part of, a European Economic Area state.

(2) In Articles 8B to 8K and this Article, “relevant producer or supplier”, in relation to an applicant for certification or a certified person, means—

- (a) an electricity generation undertaking, an electricity supply undertaking or a gas supply undertaking which meets the requirements of paragraph (3); or
- (b) a gas producer which meets the requirements of paragraph (4).

(3) An undertaking mentioned in paragraph (2)(a) meets the requirements of this paragraph if it carries out its generation or supply activity in a European Economic Area state and it—

- (a) requires a licence or similar authority to do so;
- (b) would, in the Authority’s opinion, require a licence to do so if it carried out the activity in Northern Ireland; or
- (c) has a relationship with the applicant or certified person which the Authority thinks might lead the applicant or certified person to discriminate in favour of it.

(4) A gas producer meets the requirements of this paragraph if it—

- (a) carries out its production activity in a European Economic Area state; and
- (b) has a relationship with the applicant or certified person which the Authority thinks might lead the applicant or certified person to discriminate in favour of it.]

**F15** Arts. 8B-8L inserted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), reg. 12

### **Exclusive licences under Article 8(1)(a) or (c)**

**9.—(1)** A licence granted under Article 8(1)(a) or (c) may, if the grantor having regard to the duties imposed by<sup>F16</sup> Article 14 of the Energy (Northern Ireland) Order 2003] considers it appropriate, confer on the holder of the licence, for a period specified in the licence, exclusive authority to carry on designated activities.

<sup>F17</sup>(1A) The period specified in a licence under paragraph (1) shall, in relation to any designated activities, expire—

- (a) where the activities are designated by reference to a class or description of activities, not later than the twentieth anniversary of the commencement of any of those activities under the licence; and
- (b) where the activities are designated by reference to an area, not later than the twentieth anniversary of the first supply of gas to customers in the area.]

(2) In this Article, in relation to a licence—

“designated activities” means such of the activities authorised by the licence as are designated in the licence for the purposes of this Article, and activities may be so designated by reference

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to a class or description of activities or by reference to any area in which they are authorised to be carried on by the licence;

“specified period” means the period specified in the licence under paragraph (1) or substituted for that period under paragraph (5)(a) or (7)(a).

(3) <sup>F18</sup>Subject to Article 9A, where a licence granted under Article 8(1)(a) or (c) confers on the holder exclusive authority to carry on designated activities, no other licence shall be granted under Article 8(1)(a) or (c) so as to authorise any other person to carry on any such designated activities in the specified period.

(4) Conditions included under Article 10(1)(a) in a licence conferring on the holder exclusive authority to carry on any designated activities may make special provision in relation to the carrying on of such activities within the specified period.

(5) Where the grantor is satisfied on reasonable grounds that the holder of a licence conferring exclusive authority to carry on designated activities has contravened any relevant condition of his licence, the grantor may modify the licence—

- (a) so as to substitute for the specified period such shorter period as the grantor may determine;
- (b) so as to exclude from those activities which are designated activities for the purposes of this Article such activities as the grantor may determine; or
- (c) so as to remove from the licence those provisions which confer exclusive authority to carry on designated activities.

(6) In paragraph (5) “relevant condition” means a condition of the licence (whether one included by virtue of paragraph (4) or not) which is identified in the licence as a relevant condition for the purposes of this Article.

<sup>F19</sup>(7) The grantor may, with the consent of the holder of a licence conferring exclusive authority to carry on designated activities, modify the licence—

- (a) so as to substitute for the specified period such longer period as the grantor may determine;
- (b) so as to add to those activities which are designated activities for the purposes of this Article such other activities as the grantor may determine.

(7A) The grantor may not under paragraph (7)(a) substitute a longer period than that allowed under paragraph (1A) unless the grantor is satisfied that it is necessary or expedient to do so in the interests of the efficient operation of the designated activities.]

(8) Before making any modifications under paragraph (5) or (7) the grantor shall give notice—

- (a) stating that the grantor proposes to make the modifications and setting out their effect;
- (b) stating the reasons why the grantor proposes to make the modifications; and
- (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are so made and not withdrawn.

(9) A notice under paragraph (8) shall be given—

- (a) by publishing the notice in such manner as the grantor considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
- (b) by sending a copy of the notice to the holder of the licence.

**F16** 2003 NI 6

**F17** Art. 9(1A) substituted (1.10.2006) by Gas Order 1996 (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/358), reg. 6(1)

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- F18** Words in art. 9(3) substituted (1.10.2006) by virtue of [Gas Order 1996 \(Amendment\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/358\)](#), **reg. 6(2)**
- F19** Art. 9(7)(7A) substituted (1.10.2006) by [Gas Order 1996 \(Amendment\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/358\)](#), **reg. 6(3)**

## **[<sup>F20</sup>Limitation of rights under exclusive licences**

**9A.** The prohibition in Article 9(3) shall 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—

- (a) who is described in [<sup>F21</sup>Article 38(1)] of the Directive and in respect of whom the derogation in relation to that Article under the Commission Decision does not apply; and
- (b) where the gas is supplied and conveyed through a direct line.]

- F20** Art. 9A substituted (1.10.2006) by [Gas Order 1996 \(Amendment\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/358\)](#), **reg. 7**
- F21** "In Article 9A(1)(a)" words substituted (15.4.2011) by virtue of [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 87**

## **Conditions of licences**

**10.**—(1) A licence may include—

- (a) such conditions (whether or not relating to the activities authorised by the licence) as appear to the grantor to be requisite or expedient having regard to the duties imposed by [<sup>F22</sup>Article 14 of the Energy (Northern Ireland) Order 2003]; and
- (b) conditions requiring the rendering to the grantor of a payment on the grant of the licence, or payments during the currency of the licence, or both, of such amount or amounts as may be determined by or under the licence.

(2) Without prejudice to the generality of paragraph (1)(a), conditions included in a licence by virtue of that sub-paragraph—

- (a) may require the licence holder to enter into agreements with other persons for the use of any gas plant [<sup>F22</sup> owned, leased or operated by him] (wherever situated and whether or not used for the purpose of carrying on the activities authorised by the licence) for such purposes as may be specified in the conditions; and
- (b) may include provision for determining the terms on which such agreements are to be entered into.

(3) [<sup>F22</sup>Without prejudice to the generality of paragraph (1)(a), conditions included in a licence by virtue of that sub-paragraph] may require the licence holder—

- (a) to comply with any direction given by the Department or the Director as to such matters as are specified in the licence or are of a description so specified;
- (b) except in so far as the Department or the Director consents to his doing or not doing them, not to do or to do such things as are specified in the licence or are of a description so specified;
- (c) to refer for determination by the Department or the Director such questions arising under the licence [<sup>F22</sup>, or under any document referred to in the licence,] as are specified in the licence or are of a description so specified;

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- (d) to refer for approval by the Department or the Director such things falling to be done under the licence, and such arrangements, contracts or agreements made before the grant of the licence, as are specified in the licence or are of a description so specified; and
  - (e) to provide the Department or the Director with, or publish, such information relating to the activities authorised by the licence as appear to the Department or the Director to be requisite or expedient having regard to the duties imposed by<sup>[F22]</sup> Article 14 of the Energy (Northern Ireland) Order 2003].
- <sup>[F22]</sup>(3A) Conditions included in a licence Article 8(1)(a) by virtue of paragraph (1)(a) may require the holder, in such circumstances as are specified in the licence—
- (a) so to increase his charges in connection with the conveyance of gas as to raise such amounts as may be determined by or under the conditions; and
  - (b) to pay the amounts so raised to such persons as may be so determined.]
- (4) Conditions included in a licence under paragraph (1)(a) may—
- (a) instead of specifying or describing any arrangements, contracts or agreements to which they apply, refer to arrangements, contracts or agreements designated (whether before or after the imposition of the conditions) by the Department or the Director; and
  - (b) instead of containing any provisions which fall to be made, refer to provisions set out in documents so designated and direct that those provisions shall have such effect as may be specified in the conditions.
- <sup>[F22]</sup>(5) Conditions included in a licence may contain provision for the conditions—
- (a) to have effect or cease to have effect at such times and in such circumstances as may be determined by or under the conditions; or
  - (b) to be modified in such manner as may be specified in the conditions at such times and in such circumstances as may be so determined.]
- (6) Any provision included under paragraph (5) in a licence shall have effect in addition to the provision made by this Part with respect to the modification of the conditions of a licence.
- <sup>[F22]</sup>(6A) Conditions included in a licence may provide for references in the conditions to any document to operate as references to that document as revised or re-issued from time to time.]
- (7) Any sums received by the Director in consequence of any condition of a licence shall be paid into the Consolidated Fund.

**F22** 2003 NI 6

### **Compliance with Community obligations**

<sup>[F23]</sup>**10A.**—(1) Without prejudice to the generality of Article 10(1), a licence shall include such conditions as appear to the grantor to be necessary or expedient having regard to the requirements and prohibitions laid down in the Directive.

- (2) The conditions included in a licence in accordance with paragraph (1) shall, in particular—
  - (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 the technical safety criteria and rules required by Article 8 of the Directive;
  - (c) require the licence holder to keep accounts in accordance with the requirements of Article 31 of the Directive and to have them audited in accordance with those requirements and

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shall 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.

(3) The conditions included in a licence in accordance with paragraph (1) shall, in particular, in the case of a licence under Article 8(1)(a) ensure that the holder does not disclose or abuse information contrary to Article 16 or 27 of the Directive and shall, having regard to the activities authorised by the licence, require the holder—

- (a) where he balances gas inputs to and offtakes from any pipe-line used under the licence, to adopt and follow rules which comply with the relevant requirements of Articles 13(3) and 25(5) of the Directive;
- (b) to comply with the requirements of Article 13(5) of the Directive in procuring the energy used in the carrying out of his functions;
- (c) where appropriate to carry out the tasks laid down for him by Article 25(1) of the Directive;
- (d) to refrain from discriminating between persons using or intending to use any pipe-line, facility or associated apparatus operated for the purposes of the licence, contrary to Article 25(2) of the Directive;
- (e) to provide such persons with the information required by Article 25(4) of the Directive;
- (f) to provide any other licence holder mentioned in Article 25(3) of the Directive with the information required by that provision;
- (g) to comply with the requirements for system access laid down by Article 32 of the Directive (as read with Article 2 of the Commission Decision);
- (h) to take any measures necessary for the purpose of complying with Article 16(3) of the Directive;
- (i) to facilitate (to the extent within his control) the ability of customers to change suppliers within 3 weeks, as required by Article 3(6)(a) of the Directive; and
- (j) to facilitate (to the extent within his control) the ability of customers to have access to consumption data, as required by Article 3(6)(b) of, and items (h) and (i) of paragraph 1 of Annex I to, the Directive.

(4) The conditions included in a licence in accordance with paragraph (1) shall, in particular, in the case of a licence under Article 8(1)(a)—

- (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 for 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 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 complies with items (a) and (d) of paragraph 1 of Annex I to the Directive; and
  - (ii) the requirements of items (b), (c), (d) and (g) of paragraph 1 of Annex I to the Directive are complied with in relation to the customer.

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(5) The conditions included in a licence in accordance with paragraph (1) shall, in particular, in the case of a licence under Article 8(1)(a) granted to a person forming part of a vertically integrated undertaking—

- (a) to whom Article 26(1) of the Directive applies, require that person to continue to comply with the requirements referred to in that provision for independence in terms of his legal form, organisation and decision-making in relation to his activities under the licence and to comply with the requirements laid down by Article 26(2) of the Directive for independence in terms of its organisation and decision making, in particular the minimum criteria laid down thereby and to comply with the requirements applying to such person laid down by Article 26(3) of the Directive; and
- (b) who carries on the combination of activities to which Article 29 of the Directive applies, require that person to comply with the requirements laid down by that provision for independence in terms of its legal form, organisation and decision-making in relation to its activities under the licence.

(6) The conditions included in a licence in accordance with paragraph (1) shall, in particular, in the case of a licence under Article 8(1)(a)—

- (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 that the ownership unbundling requirement in Article 8G continues 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 the requirements 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 the requirements in Article 13(4) or 13(5) of the Directive which are relevant to the holder continue to be met;
- (c) where the holder is certified under the third certification ground in Article 8F, require that the requirements in Chapter IV of the Directive are 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.

(7) The conditions included in a licence in accordance with paragraph (1) shall, in particular, in the case of a licence under Article 8(1)(a) granted to a person to whom Article 9(1) of the Directive applies, as appropriate having regard to the activities authorised by the licence, require the holder to carry out the tasks laid down for him by Article 13(1) of the Directive.

(8) The conditions included in a licence in accordance with paragraph (1) shall, in particular, in the case of a licence under Article 8(1)(b) ensure that the holder does not disclose or abuse information contrary to Article 16 of the Directive and shall require the holder as appropriate having regard to the activities authorised by the licence—

- (a) to carry out the tasks laid down for him by Article 13(1) of the Directive;
- (b) to comply with the requirements for access to storage laid down by Article 33 of the Directive in accordance with criteria published by the Authority for the purposes of paragraph (1) of that Article; and
- (c) where the person forms part of a vertically integrated undertaking, to comply with the requirements laid down in Article 15 of the Directive for independence in terms of its legal form, organisation and decision-making in relation to its activities under the licence and, in particular, to comply with the minimum criteria laid down by Article 15(2) of the Directive.

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(9) The conditions included in a licence in accordance with paragraph (1) shall, in particular, in the case of a licence under Article 8(1)(c)—

- (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 the information (including information about the contractual terms and conditions offered to such consumers) required by Article 3(3) of the Directive;
- (c) ensure that any person who is an eligible customer for the purposes of Article 37 of the Directive (as read with Article 2 of the Commission Decision) can exercise his freedom to purchase gas from the supplier of his choice within the meaning of that Article;
- (d) ensure that persons exercising that freedom are not charged therefor in compliance with paragraph 1(e) of Annex I to the Directive, and are able to use procedures which comply with paragraph 1(f) of Annex I to the Directive;
- (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 such a 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, as required by Article 3(6)(a) and Article 3(3) of the Directive;
- (g) ensure that customers have consumption data at their disposal and are able to give access to that data to other suppliers, as required by Article 3(6)(b) of, and items (h) and (i) of paragraph 1 of Annex I to, the Directive;
- (h) ensure that customers have access to information about sources of energy efficiency advice, as required by Article 3(4) and 3(8) of the Directive;
- (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, as required by Article 3(12) of the Directive;
- (j) ensure that household customers are offered a wide choice of payment methods, which do not unduly discriminate between customers, as required by paragraph 1(d) of Annex I to the Directive;
- (k) ensure that the terms and conditions of supply contracts offered by the licence holder to household customers comply with items (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, as required by paragraph 1(d) of Annex I to the Directive;
- (m) ensure that household customers receive a final bill following changing suppliers within the time frame required by paragraph 1(j) of Annex I to the Directive; and
- (n) ensure that the holder of the licence maintains the records required by Article 44 of the Directive.]

**F23** Art. 10A substituted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), [reg. 15](#)



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VALID FROM 25/07/2014

## [<sup>F24</sup>Licensing and Energy Efficiency

**10AA.**—(1) Without prejudice to the generality of Article 10(1), a licence shall include such conditions as appear to the grantor to be requisite or expedient to ensure that any activity authorised by it is carried out in compliance with the relevant requirements and prohibitions laid down by the Energy Efficiency Directive and referred to in the following paragraphs.

(2) Subject to paragraph (5) the conditions included in a licence in accordance with paragraph (1) shall in particular in the case of a licence under Article 8(1)(c) include such conditions as appear to the grantor to be requisite or expedient to require, where a customer of the licence holder takes a supply of gas through a smart meter, that the licence holder ensures that—

- (a) the meter complies with the relevant requirements of Article 9(2)(a) and 10(2) and, where the customer so requests, Article 9(2)(c) of the Energy Efficiency Directive;
- (b) the customer is provided with the information required by Article 9(2)(a) and 10(2) of the Energy Efficiency Directive;
- (c) the information required by Article 10(2)(b) of the Energy Efficiency Directive is provided in the format so required;
- (d) where the customer so requests, the customer or another person acting on the customer's behalf is provided with the information required by Article 9(2)(d) of the Energy Efficiency Directive in the format so required;
- (e) the meter and any information provided by it is secure as required by Article 9(2)(b) of the Energy Efficiency Directive; and
- (f) the advice and information required by Article 9(2)(e) of the Energy Efficiency Directive is provided to the customer.

(3) The conditions included in a licence in accordance with paragraph (1) shall in particular in the case of a licence under Article 8(1)(c) also include such conditions as appear to the grantor to be requisite or expedient to require, where a customer of the licence holder does not take a supply of gas through a smart meter, that the licence holder ensures that any bill or statement of account provided to the customer complies with the requirements of Article 8(1) of and paragraph 1.1 of Annex VII to the Energy Efficiency Directive.

(4) The conditions included in a licence in accordance with paragraph (1) shall, in the case of a licence under Article 8(1)(c) also require that the licence holder ensures that—

- (a) the information required by Article 10(3)(a) of the Energy Efficiency Directive is provided, where it is available and the customer to whom it relates so requests, to an energy service provider designated by the customer;
- (b) any bill or statement of account sent to a customer—
  - (i) contains the information required by Article 10(3)(c) of and paragraph 1.2 and 1.3 of Annex VII to the Energy Efficiency Directive;
  - (ii) complies with the guidance issued and published by the Authority, in particular for the purposes referred to in Article 10(3)(d) of the Energy Efficiency Directive; and
  - (iii) if the customer so requests, is in an electronic format;
- (c) where a customer so requests, the information required by Article 10(3)(b) of the Energy Efficiency Directive is provided to the customer;

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- (d) any customer taking a supply of gas from the licence holder is provided with the information required by paragraph 1.3 of Annex VII to the Energy Efficiency Directive;
  - (e) any information provided to a customer in accordance with any conditions included under this paragraph is provided in a timely manner and in an easily understandable format for the purposes referred to in Article 10(3)(e) of the Energy Efficiency Directive; and
  - (f) a charge is not made in respect of any bill or statement of account sent by a customer or in respect of any information provided to the customer (whether in the bill or statement of account or otherwise) contrary to Article 11(1) of the Energy Efficiency Directive.
- (5) The duty on the Authority in paragraph (2) to include conditions in a licence shall only have 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 Directive 2009/125/EC and 2010/125/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 communication” has the same meaning as Section 4(1) of the Electronic Communications Act (Northern Ireland) 2001; and
  - (d) other expressions which are also used in the Energy Efficiency Directive shall have the same meaning as in that Directive.]

**F24** Art. 10AA inserted (25.7.2014) by [Energy Efficiency Regulations \(Northern Ireland\) 2014 \(S.R. 2014/198\)](#), **reg. 10**

VALID FROM 12/04/2013

### [<sup>F25</sup>Exemption from requirement for system access

**10B.**—(1) Where any licence under Article 8(1)(a) or (d) is subject to a relevant condition, the holder of such a licence may apply to the Authority for an exemption under this Article with respect to the system or any part of the system to which the condition applies.

(2) An application under paragraph (1) may be sent to the Authority only after a person has applied for access to the system or part of the system in question in accordance with a relevant condition.

(3) Such an application may be made before or after the holder of the licence has refused access.

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(4) An application made after such a refusal must, however, be made before the end of the 7 days beginning with the date of the refusal.

(5) An application under paragraph (1) may only be made if the holder of the licence considers that allowing the application for system access would cause serious financial difficulties because of take or pay commitments of the licence holder under one or more gas purchase contracts.

(6) An application under paragraph (1) must enclose all relevant information, including in particular information with respect to—

- (a) the nature and extent of the difficulties mentioned in paragraph (5) which the holder of the licence considers would arise (“the difficulties”);
- (b) any steps taken by the holder of the licence to prevent the difficulties from arising; and
- (c) the period over which the holder considers the difficulties would arise.

(7) The Authority may give an exemption under this Article if it considers that—

- (a) having regard to any steps taken by the holder of the licence to prevent the difficulties from arising, the only reasonably available means of prevention is an exemption under this Article; and
- (b) an exemption ought to be given having regard to—
  - (i) the objective of achieving a competitive gas market;
  - (ii) the need for the holder to comply with any relevant public service obligations within the meaning of paragraph (2) of Article 3 of the Directive which has been imposed on the holder pursuant to that paragraph;
  - (iii) the need to ensure security of supply of gas;
  - (iv) the position of the holder of the licence in the gas market and the level of competition in the market;
  - (v) the level of seriousness of the difficulties;
  - (vi) the time when the gas purchase contract was entered into and the extent to which the holder could reasonably have foreseen at that time that the difficulties were likely to arise;
  - (vii) the terms of the gas purchase contract, including the extent to which the contract allows for market changes;
  - (viii) the significance of the system or part of the system to which the application under paragraph (1) applies; and
  - (ix) the overall effect of the exemption on the operation of an economically efficient gas market.

(8) An exemption under this Article must be given for a limited period and in writing and must specify—

- (a) the period of the exemption; and
- (b) any conditions the Authority considers necessary in order to ensure that the holder of the licence to whom the exemption is granted takes all reasonably practical steps to ensure that, by the time that the exemption expires, the difficulties would no longer arise.

(9) If the Authority has given an exemption under this Article, it must send to the European Commission as soon as is reasonably practicable—

- (a) a copy of the decision to give the exemption, including the conditions subject to which the exemption was given; and

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- (b) any other information the Authority considers relevant to the exemption or to the terms in which the exemption was given.
- (10) An exemption under this Article may be modified or revoked by the Authority—
  - (a) in accordance with its provisions;
  - (b) at any other time, if the Authority considers that an exemption under this Article is no longer required.
- (11) The Authority must modify or revoke an exemption given under this Article if required to do so by the European Commission in accordance with Article 48(2) of the Directive.
- (12) In this Article,
  - (a) “relevant condition” means a condition included in a licence under Article 10A(3) or (10) and relating to compliance with the requirement for system access laid down by Article 32 of the Directive; and
  - (b) “system” includes in relation to the holder of a licence under Article 8(1)(d) an LNG facility;
  - (c) “take or pay commitment” and “gas purchase contract” has the same meaning as in Article 48(1) of the Directive.]

**F25** Art. 10B inserted (12.4.2013) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2013 (S.R. 2013/92), reg. 19

**Standard conditions of licences**

11.—(1) Such conditions as may be determined by the Department, and published by it in such manner as it considers appropriate, in relation to licences under sub-paragraph (a), (b) or (c) of Article 8(1) shall be standard conditions for the purposes of licences under that sub-paragraph.

[<sup>F26</sup>(1A) The standard conditions for the purposes of licences under sub-paragraph (a), (b) or (c) of Article 8(1) may contain provision—

- (a) for any standard condition included in such a licence not to have effect until brought into operation in such manner and in such circumstances as may be specified in or determined under the standard conditions;
- (b) for the effect of any standard condition included in such a licence to be suspended in such manner, and in such circumstances, as may be so specified or determined; or
- (c) for any standard condition included in such a licence which is for the time being suspended to be brought back into operation in such manner and in such circumstances as may be so specified or determined.]

(2) Subject to [<sup>F27</sup>Article 14(1)(aa)] and Articles 14(2), 17(2) and 18(2)[<sup>F26</sup> and to Article 60(5) of the Energy (Northern Ireland) Order 2003], each condition which by virtue of paragraph (1) is a standard condition for the purposes of licences under sub-paragraph (a), (b) or (c) of Article 8(1) shall be incorporated (that is to say, incorporated by reference) in each licence under that sub-paragraph.

(3) <sup>F28</sup> .....

(4) The modification under [<sup>F29</sup>Article 14(1)(aa)] of a condition of a licence shall not prevent so much of the condition as is not modified being regarded as a standard condition for the purposes of this Part.

**F26** 2003 NI 6

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- F27** Words in art. 11(2) substituted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 63**
- F28** Art. 11(3) omitted (15.4.2011) by virtue of [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 64**
- F29** Words in art. 11(4) substituted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 65**

### Assignment of licences

12.—(1) A licence shall be capable of being assigned either generally or—

- (a) in the case of a licence under Article 8(1)(a), so far as relating to the whole or any part of<sup>F30</sup> an authorised area;
- (b) in the case of a licence under Article 8(1)(b), so far as relating to any specified gas storage facility;
- (c) in the case of a licence under Article 8(1)(c), so far as relating to any specified persons or premises,

but only if it includes a condition authorising such assignment.

In this paragraph “specified” means specified in the licence, or of a class or description, or in an area, so specified.

(2) A licence shall not be capable of being assigned except with the consent of the Director.

(3) In deciding whether to give his consent under paragraph (2), the Director shall apply the same criteria as he would apply if—

- (a) in the case of a general assignment, he were deciding whether to grant a corresponding licence to the assignee;
- (b) in the case of any other assignment, he were deciding whether—
  - (i) to grant to the assignee a licence corresponding to so much of the licence as is proposed to be assigned; and
  - (ii) to grant to the assignor a licence corresponding to so much of the licence as is proposed to be retained.

(4) Subject to paragraph (5), a consent under paragraph (2) may be given subject to compliance with—

- (a) such modification or other conditions as the Director considers necessary or expedient for the purpose of protecting the interests of consumers; and
- (b) such incidental or consequential modification conditions as he considers necessary or expedient.

(5) The Director shall give the Department not less than 28 days' notice of any proposal of his to impose a modification condition; and if, before the expiry of the time specified in the notice, the Department directs the Director not to impose the condition, the Director shall comply with the direction.

(6) A licence may include conditions which must be complied with before the licence can be assigned.

(7) An assignment, or purported assignment, of a licence shall be void—

- (a) if the licence is not capable of assignment;
- (b) if the assignment, or purported assignment, is in breach of a condition of the licence; or
- (c) if there has, before the assignment or purported assignment, been a contravention of a condition subject to compliance with which the consent required by paragraph (2) is given.

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*Status: Point in time view as at 15/04/2011. This version of this cross heading contains provisions that are not valid for this point in time.*

*Changes to legislation: The Gas (Northern Ireland) Order 1996, Cross Heading: Licensing of supply of gas and associated activities is up to date with all changes known to be in force on or before 21 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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(8) A licence shall not be capable of being assigned under any other provision of this Part.

(9) In this Article—

“assignment” includes any form of transfer;

“modification condition” means a condition requiring or otherwise providing for the making of modifications to the conditions of a licence;

and the reference in this paragraph to a licence includes (where applicable) a reference to so much of a licence as is retained by an assignor.

**F30** prosp. subst. by 2003 NI 6

### **Powers of licence holders**

**13.**—(1) Subject to paragraph (2)—

(a) Schedule 2 (which makes provision with respect to the compulsory acquisition of land);  
and

(b) Schedule 3 (which confers other powers in relation to land and makes other provision),

shall, to the extent that his licence so provides, have effect in relation to the holder of a licence under Article 8(1)(a) or (b); and references in those Schedules to a licence holder shall be construed accordingly.

(2) Where any provision of either of the Schedules mentioned in paragraph (1) is applied to a licence holder by his licence, it shall have effect subject to such restrictions, exceptions and conditions as may be included in the licence for the purpose of qualifying that provision as so applied or any power or right conferred by or under it.

**Status:**

Point in time view as at 15/04/2011. This version of this cross heading contains provisions that are not valid for this point in time.

**Changes to legislation:**

The Gas (Northern Ireland) Order 1996, Cross Heading: Licensing of supply of gas and associated activities is up to date with all changes known to be in force on or before 21 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.