
STATUTORY RULES OF NORTHERN IRELAND

2011 No. 155

**The Gas and Electricity (Internal Markets)
Regulations (Northern Ireland) 2011**

PART IV

ELECTRICITY AND GAS LICENSING AND COMMUNITY OBLIGATIONS

Amendments to the Electricity Order

14. For Article 11A (Compliance with Community obligations) of the Electricity Order there shall be substituted the following Article—

“**11A.**—(1) Without prejudice to the generality of Article 11(1), a licence shall include such conditions as appear to the grantor to be requisite or expedient to ensure any activity authorised by it is carried out in compliance with the relevant requirements and prohibitions laid down by the Directive.

(2) The conditions included in a licence in accordance with paragraph (1) shall, in particular—

- (a) require the licence holder to give to the Authority, in each year it is required by the Authority to do so, a report containing such information as the Authority may require in relation to—
 - (i) the present and likely future balance between supply of and demand for electricity in Northern Ireland and Ireland;
 - (ii) additional generating capacity under construction or being planned in Northern Ireland and Ireland;
 - (iii) the quality and level of maintenance of the generating plant and equipment and of the transmission, distribution and supply systems in Northern Ireland and Ireland;
 - (iv) measures taken and planned to ensure that peak demand for electricity is met and to deal with shortfalls in electricity supply in Northern Ireland and Ireland,

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

- (b) require the licence holder to keep accounts in accordance with the requirements of Article 31 of the Directive and to have them audited in accordance with those requirements and shall confer on the Department and the Authority a right of access to his accounts for the purpose of ensuring compliance with those requirements; and
- (c) ensure that any person who is an eligible customer for the purposes of Article 33 of the Directive can exercise his freedom to purchase electricity from the supplier of his choice within the meaning of that Article.

(3) The conditions referred to in paragraph (1) shall, in particular, in the case of a transmission licence ensure that the holder does not disclose 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 12 or 15(1) of the Directive;
- (b) where he carries out the tasks laid down by Article 15(1) of the Directive, to do so in accordance with such criteria as may be determined and published by the Authority for the purposes of paragraph (2) of that Article;
- (c) in relation to any task referred to in Article 15(3) to (5) of the Directive, to follow such rules for priority as may be specified in the conditions for the purposes of those provisions;
- (d) to comply with the requirements of Article 15(6) of the Directive in procuring the energy used in the carrying out of his functions;
- (e) where he balances electricity inputs to and offtakes from any transmission system used under the licence, to adopt and follow rules which comply with the relevant requirements of Article 15(7) of the Directive; and
- (f) to comply with the requirements for system access laid down by Article 32 of the Directive.

(4) The conditions referred to in paragraph (1) shall, in particular, in the case of a distribution licence ensure that the holder does not disclose information contrary to Article 27 of the Directive and shall require the holder—

- (a) to carry out the tasks laid down for him by Articles 25(1) and (7) of the Directive;
- (b) to act in accordance with paragraph (2) of Article 25 of the Directive and to provide the information required by paragraph (3) of that Article;
- (c) in relation to any task referred to in Article 25(4) of the Directive, to follow such rules for priority as may be specified in the conditions for the purposes of those provisions;
- (d) to comply with the requirements of Article 25(5) of the Directive in procuring the energy used in the carrying out of his functions;
- (e) where he balances electricity inputs to and offtakes from any distribution system used under the licence, to adopt and follow rules which comply with the relevant requirements of Article 25(6) of the Directive;
- (f) to comply with the requirements for system access laid down by Article 32 of the Directive;
- (g) to facilitate (to the extent within his control) the ability of customers to change suppliers within 3 weeks, as required by Article 3(5)(a) of the Directive; and
- (h) to facilitate (to the extent within his control) the ability of customers to have access to consumption data, as required by Article 3(5)(b) of, and items (h) and (i) of paragraph 1 of Annex I to, the Directive.

(5) The conditions included in a licence in accordance with paragraph (1) shall, in particular, in the case of a transmission licence—

- (a) where the holder, or a holder of a transmission licence in relation to whom the holder is a related transmission licensee, is certified under the first certification ground in Article 10F, require that the ownership unbundling requirement in Article 10G continues to be met in relation to the holder;
- (b) where the holder, or a holder of a transmission licence in relation to whom the holder is a related transmission licensee, is certified under the second certification

- ground in Article 10F, require the maintenance in force of the arrangements by virtue of which the requirements of Article 9(9) of the Directive were met;
- (c) where the holder is certified under the third certification ground in Article 10F or is designated as independent system operator for the purposes of that certification ground—
- (i) require that the requirements of Articles 13(2) and 14(1) and (2) of the Directive which are relevant to the holder continue to be met; and
 - (ii) require that the requirements of Article 13(4) or 13(5) of the Directive which are relevant to the holder continue to be met; and
- (d) require the holder to notify the Authority if any of the other conditions referred to in this paragraph ceases or is likely to cease to be met.
- (6) Subject to paragraph (5), the conditions included in a licence in accordance with paragraph (1) shall, in particular, in the case of a distribution licence granted to a person forming part of a vertically integrated undertaking—
- (a) require that person to comply with the requirements for independence in terms of his legal form, organisation and decision-making laid down by Article 26(1) of the Directive;
 - (b) require that person to comply with the requirements for independence in terms of his management and decision-making rights laid down by Article 26(2) of the Directive; and
 - (c) require that person to comply with the requirements laid down by Article 26(3) of the Directive.
- (7) The conditions included in a licence in accordance with paragraph (1) shall, in particular, in the case of a transmission licence granted to a person forming part of a vertically integrated undertaking who carries on the combination of activities to which Article 29 of the Directive applies, as appropriate having regard to the activities authorised by the licence, require that person to comply with the requirements laid down by that provision in relation to those activities.
- (8) The conditions referred to in paragraph (1) shall, in particular, in the case of a transmission or distribution licence or a licence under Article 10(1)(c) require that any supply of electricity by the licence holder to a household customer, or (as the case may be) any transmission or distribution by a licence holder in connection with such a supply, meets specified quality standards.
- (9) The conditions referred to in paragraph (1) shall, in particular, in the case of a licence under Article 10(1)(c)—
- (a) require that any supply of electricity by the licence holder to a household customer is given at reasonable, easily and clearly comparable, transparent and non-discriminatory prices as required by Article 3(3) of the Directive;
 - (b) require the introduction and maintenance of safeguards to help any consumers referred to in Article 12(3) of the Energy (Northern Ireland) Order 2003 in particular to avoid disconnection from an electricity supply;
 - (c) ensure that consumers of electricity have access to the information required by Article 3(9) of the Directive;
 - (d) ensure that household customers are not charged for changing supplier, 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 electricity (including information about the contractual terms and conditions offered to such consumers) by the holder of such a licence complies with the requirements of Article 3(7) of the Directive;
- (f) make provision for customers wishing to change suppliers to be able to do so within 3 weeks, as required by Articles 3(5)(a) and 3(7) 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(5)(b) 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 Articles 3(8) and 3(11) 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(16) 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 40 of the Directive.”.

Amendments to the Gas Order

15. For Article 10A (Compliance with Community obligations) of the Gas Order there shall be substituted the following Article—

“**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 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.

(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.

(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.”.