

2013 No. 281

GAS

**The Gas (Applications for Licences and Extensions)
(Amendment No. 2) Regulations (Northern Ireland) 2013**

Made - - - - *28th November 2013*

Coming into operation - *20th December 2013*

The Department of Enterprise, Trade and Investment^(a) makes the following Regulations in exercise of the powers conferred by Article 8(3) of the Gas (Northern Ireland) Order 1996^(b).

Citation and commencement

1. These Regulations may be cited as the Gas (Applications for Licences and Extensions) (Amendment No. 2) Regulations (Northern Ireland) 2013 and come into operation on 20th December 2013.

Amendment of the Gas (Applications for Licences and Extensions) Regulations (Northern Ireland) 1996

2.—(1) The Gas (Applications for Licences and Extensions) Regulations (Northern Ireland) 1996^(c) are amended in accordance with the following paragraphs.

(2) In regulation 2—

(a) in the definition of “extension” omit the “and” at the end of sub-paragraph (b) and at the end of sub-paragraph (c) insert “and” and thereafter add—

“(d) an LNG licence, an extension of that licence under Article 8(2)(d) of the Order;”;

(b) after the definition of a “gas supply licence” insert—

““LNG licence” means a licence under Article 8(1)(d) of the Order;”.

(3) In regulation 4—

(a) at the end of paragraph (1)(c), for the full-stop substitute “;” and thereafter insert—

“(d) an application for an LNG licence, or for an extension, shall be accompanied by the documents and other particulars specified in Part IV of Schedule 2.”;

(b) in paragraph (2) for “and III” substitute “, III and IV”; and

(c) for paragraph (3) substitute—

“(3) Where a modification of any standard condition is specified in accordance with paragraph 18 of Part I of Schedule 2, paragraph 13 of Part II of Schedule 2, paragraph 16 of

(a) The Department of Economic Development was renamed the Department of Enterprise, Trade and Investment by Article 3(5) of the Departments (Northern Ireland) Order 1999 (S.I. 1999/283 (N.I.1))

(b) S.I. 1996/275 (N.I.2), relevant amendments were made by S.R. 2011 No. 155 and S.R. 2013 No. 92

(c) S.R. 1996 No. 447, as amended by S.R. 2010 No. 326 and S.R. 2013 No. 24

Part III of Schedule 2 or paragraph 13 of Part IV of Schedule 2, the obligation imposed by paragraph (2)(a) shall be modified accordingly.”.

(4) In regulation 6(1)(b) omit the “and” at the end of sub-paragraph (ii) and at the end of sub-paragraph (iii) for the full-stop substitute “; and” and thereafter insert—

“(iv)in the case of an LNG licence in the area in which the LNG facility to which the licence relates is to be located.”.

(5) In regulation 7 after sub-paragraph (3) insert—

“(3A) The fee payable with an application for an LNG licence shall be £2000.”.

(6) For Schedule 1 (Form of Application for a Gas Conveyance Licence, Gas Storage Licence or Gas Supply Licence) substitute the Schedule 1 set out in Schedule 1 to these Regulations.

(7) For Part I of Schedule 2 (Documents and other Particulars to accompany an Application for a Gas Conveyance Licence or Extension) substitute the Part I set out in Schedule 2 to these Regulations.

(8) For Part II of Schedule 2 (Documents and other Particulars to accompany an Application for a Gas Storage Licence or Extension) substitute the Part II set out in Schedule 3 to these Regulations.

(9) For Part III of Schedule 2 (Documents and other Particulars to accompany an Application for a Gas Supply Licence or Extension) substitute the Part III set out in Schedule 4 to these Regulations.

(10) After Part III of Schedule 2 insert the Part IV set out in Schedule 5 to these Regulations.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 28th November 2013.



A F Hepper
A senior officer of the
Department of Enterprise, Trade and Investment

SCHEDULE 1

“SCHEDULE 1

Regulation 3

Form of Application for a Gas Conveyance Licence, Gas Storage Licence, Gas Supply Licence or LNG Licence

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| <p>1. Full name of the applicant.</p> <p>.....</p> <p>.....</p> <p>.....</p> |
| <p>2. Address of the applicant or, in the case of a body corporate, the registered or principal office.</p> <p>.....</p> <p>.....</p> <p>.....</p> |
| <p>3. Where the applicant is a partnership or other joint venture (other than a body corporate), the name and address of each party concerned.</p> <p>.....</p> <p>.....</p> <p>.....</p> |
| <p>4. The name, address and telephone number of the person or persons to whom correspondence or enquiries concerning the application should be directed.</p> <p>.....</p> <p>.....</p> <p>.....</p> |
| <p>5. The particular type of licence(s) sought, that is to say whether to convey gas and/or store gas and/or supply gas and/or operate an LNG facility, or an extension of any of these types of licence granted to the applicant at the time of this application.</p> <p>.....</p> <p>.....</p> <p>.....</p> |
| <p>6. Details of any other licence application to which the applicant wishes this application to be connected (<i>see Note 1</i>).</p> <p>.....</p> <p>.....</p> <p>.....</p> |
| <p>7. The date from which the licence or extension is desired to take effect.</p> <p>.....</p> <p>.....</p> <p>.....</p> |

8. Status of the applicant, that is to say whether the applicant is a public limited company, private limited company, overseas company, other body corporate, partnership, unincorporated association, sole trader or other entity (and in the last case particulars of the legal status).

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9. If the applicant is a body corporate:-

(a) The jurisdiction under which it is incorporated.

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(b) If applicable, its registration number.

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(c) The full names and addresses of its current Directors (including any shadow director within the meaning of section 251 of the 2006 Act) or, where appropriate, the corresponding officers.

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(d) The name, address and telephone number of a person or persons authorized to accept service of any notices or processes required to be served on the applicant.

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(e) The name and registered office of any holding company (within the meaning of section 1159 of the 2006 Act) of the applicant and the name and registered or principal office of any parent undertaking (within the meaning of section 1162 of the 2006 Act) of the applicant.

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10. If the applicant is neither a body corporate nor a sole trader, the name(s) and address(es) of the person or persons in whom effective control of the applicant rests.

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11. Where a holding of 20% or more of the shares (*see Note 2*) of an applicant is held by a body corporate or partnership or an unincorporated association carrying on a trade or business with or without a view to profit, the name(s) and address(es) of the holder(s) of such shares shall be provided specifying in each case the class of share held, the number of shares so held and the percentage of the aggregate number of shares of that class represented thereby.

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12. Details of any licences under the Order¹ or the Electricity (Northern Ireland) Order 1992² held, applied for (whether or not successfully) or intended to be applied for by the applicant or (so far as is known to the applicant) by any person who is a related person in relation to the applicant (*See Note 3*).

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13. Confirmation of statement by the applicant:

The applicant or, where the applicant is a company a senior officer of the company, must indicate his or her confirmation of statements (a) to (f) below by **initialing** next to those statements and **signing** where indicated below. In relation to statement (c) only, if the applicant or senior officer is not able to confirm the statement then he or she need not initial this statement provided that he or she provides a written description of the reasons why the senior officer cannot give such confirmation.

"I, the applicant or a duly authorized officer of the applicant hereby confirm that:

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| (a) the information provided in this application is true, accurate and complete. | Initial below |
| | |
| (b) the applicant has not breached any applicable legislation or regulations in preparing or making this application | Initial below |
| | |
| (c) the applicant is not aware of any application to place it in liquidation, administration or receivership, or to commence any analogous process or proceeding in any jurisdiction, and that no such process has been commenced. | Initial below |
| | |
| (d) the applicant is acting as a principal in the licence application and not as an agent for any undisclosed person and the applicant has expressly authorized me to act on its behalf in completing this application. | Initial below |
| | |
| (e) the applicant understands the obligations of a transmission system operator and/or distribution system operator, a gas storage operator, a gas supplier, or an LNG facility operator (as applicable) to comply with the conditions in the relevant licence. | Initial below |
| | |
| (f) the applicant understands that knowingly or recklessly making a false, incomplete, or misleading statement in support of this application may lead to the grant of the licence being refused, and may result in criminal prosecution under Article 46 of the Order." | Initial below |
| | |

Signed:

Name:

Position:

Dated:

¹ S.I. 1996/275 (N.I.2), relevant amendments were made by S.R. 2011 No. 155 and S.R. 2013 No 92

² S.I. 1992/231 (N.I. 1)

14. In this schedule:-

“the 2006 Act” means the Companies Act 2006¹;

“senior officer” means the chairman, chief executive, other director or company secretary of the applicant.

Note 1

An application is “connected” to one or more other applications (whether or not made by the same applicant) where the applicant indicates that, if any of the licences which is the subject of those other applications were not to be granted to the person applying for it, it would be its intention to withdraw that application.

Note 2

References to shares:-

- (a) in relation to an applicant with a share capital, are to allotted shares;
- (b) in relation to an applicant with capital but no share capital, are to rights to share in the capital of the applicant; and
- (c) in relation to an applicant without capital, are to interests:-
 - (i) conferring any rights to share in the profits or liability to contribute to the losses of the applicant; or
 - (ii) giving rise to an obligation to contribute to the debts or expenses of the applicant in the event of a winding up.

Note 3

“Related person” means:-

- (a) in relation to an applicant who is an undertaking within the meaning of section 1161 of the 2006 Act (“the principal undertaking”), a parent or a subsidiary undertaking of the principal undertaking, or a subsidiary undertaking of a parent undertaking of the principal undertaking, in each case within the meaning given by section 1162 of the 2006 Act; and
- (b) in relation to any applicant (including such an undertaking) or connected person of the applicant within the meaning of section 286 of the Taxation of Chargeable Gains Act 1992²

¹ 2006 c.46

² 1992 c.12

SCHEDULE 2

“SCHEDULE 2

Regulation 4(1)(a)

Part 1

Documents and other Particulars to accompany an Application for a Gas Conveyance Licence or Extension

Financial information

1. If the applicant is a company copies of:—
 - (a) the most recent annual accounts of the applicant in respect of which an auditors' report has been prepared, together with that report;
 - (b) the annual accounts of the applicant for the two financial years preceding that to which the accounts referred to in sub-paragraph (a) relate, together with the appropriate auditors' reports;
 - (c) such interim accounts (whether audited or not) as may have been prepared in respect of a period more recent than that covered by any of the documents specified in sub-paragraph (a) and (b).
2. In addition to the documents specified at paragraph 1 if the applicant is a subsidiary undertaking, copies of:—
 - (a) the most recent group accounts in respect of the group of which the subsidiary undertaking forms part and in respect of which an auditors' report has been prepared, together with that report;
 - (b) the group accounts in respect of that group for the two financial years preceding that to which the accounts referred in sub-paragraph (a) relate, together with the appropriate auditors' reports; and
 - (c) such interim accounts for that group (whether audited or not) as may have been prepared in respect of a period more recent than that covered by any of the documents specified in sub-paragraphs (a) and (b).
3. Where the documents specified at paragraph 2 do not include the consolidated accounts for any parent undertaking of the applicant established outside Northern Ireland, copies of such accounts together with any auditors' reports, as indicate the financial state of affairs of the group in question:-
 - (a) at the time of the application; and
 - (b) at the end of each of the three financial years preceding that time.

Note

If the application is for an extension of a licence, the information and documents specified at paragraphs 1 to 3 above and paragraphs 4 to 7 below need only be given in so far as, in any material respect they differ from or add to the most recent information or documents which were provided in relation to the same requirement:—

- (a) with an application made by the applicant in accordance with these Regulations; or
- (b) subsequent to such an application in pursuance of a condition of the applicant's licence.

4. Where the applicant is not a company, such accounts or other information as indicate the financial state of affairs of the applicant, and of any person in whom effective control of the applicant resides:—

- (a) at the time of the application; and
- (b) at the end of each of the three financial years preceding that time.

5. A statement giving such further particulars (if any), whether by way of financial projections, sources of finance (including the amount of any borrowings required or being sought from banks or other lending institutions) or otherwise, as will, in conjunction with such particulars and documents as are provided in accordance with paragraphs 1 to 4, indicate whether the applicant would be likely to be able to finance the activities authorised by its licence if the application were granted.

Constitutional documents

6. Where the applicant is a company:—

- (a) copies of its Memorandum and Articles of Association or other constitutional documents;
- (b) the names of its directors as at the date of the application; and
- (c) the names of its principal shareholders as at the date of the application.

7. Details of each parent undertaking, holding company and ultimate controller of the applicant, and full details of the position of the applicant within any group structure.

Expertise of applicant

8. A statement giving such particulars of the applicant, and of any sub-contractors or other persons on whose expertise or experience the applicant proposes to rely, as may indicate whether the applicant or that other person has or will acquire the necessary skills to undertake the activities to which the licence or, as the case may be, the extension, relates and any other activities which are incidental thereto.

9. Details of any licence or authorisation held by the applicant in a jurisdiction other than Northern Ireland which is equivalent to a licence under the Order^(a) or the Electricity (Northern Ireland) Order 1992^(b).

Proposed authorised area and pipeline system

10. A statement as to the type of gas conveyance licence for which the applicant is applying, being:—

- (a) a licence to convey gas through a system which mainly comprises pipelines with pressure above 7 bar;
- (b) a licence to convey gas through a system which mainly comprises pipelines with pressure of 7 bar or below; or
- (c) a licence to convey gas through both of the above types of systems.

11. A map drawn to an appropriate scale showing:—

- (a) the area in which the applicant proposes to convey gas from one place to another (“the proposed area”);
- (b) the proposed configuration of the pipeline system the applicant would use for that purpose if the application were granted; and

(a) S.I. 1996/275 (N.I. 2), relevant amendments were made by S.R. 2011 No. 155 and S.R. 2013 No. 92

(b) S.I. 1992 No. 231 (N.I. 1)

- (c) any pipes used or to be used by the applicant wholly or mainly for the purpose of conveying gas to the proposed area if the application were granted.

12. A list of the district councils in whose area the proposed area lies.

Development plan

13. A development plan in respect of the activities (“the authorised activities”) which would be authorised by the licence or, as the case may be, the extension, if the application were granted, including estimates, for each year of the period required to complete the development, of:—

- (a) the length(s) (in kilometres), diameter(s) and design operating pressure(s) of the pipelines to be used for the authorised activities;
- (b) the number of premises which may be connected to the pipeline system;
- (c) the amount of gas, in therms, expected to be conveyed, separately identifying any amount to be conveyed to domestic premises;
- (d) the total revenue from the authorised activities;
- (e) the total capital costs of the authorised activities, showing separately such costs in relation to procuring and laying pipelines, providing and installing meters, procuring and installing other operational plant and machinery, and overhead and administrative requirements (in all cases excluding finance charges);
- (f) the total operating costs of the authorised activities, showing separately such costs in relation to fuel (including gas purchases), staff (including consultants’) costs, rent and rates, development costs and insurance; and
- (g) net annual cashflow,

and stating, where appropriate, the assumptions underlying the figures provided.

System security standards

14. Particulars of the proposed system security standards for the pipeline network.

Safety requirements

15. Such particulars as will indicate whether any pipeline system through which the applicant would be authorised to convey gas if the application or extension were granted would be operated safely.

16. Particulars of the applicant’s proposed arrangements to secure the performance of any obligations in relation to escapes of gas imposed on him by Schedule 5 to the Order.

Exclusive authority

17. Any exclusive authority to convey gas sought and justification for the conferral of such authority.

Standard conditions

18. Any modification requested to any of the standard conditions for a gas conveyance licence and the grounds on which the applicant believes that any such modification:—

- (a) is requisite to meet the circumstances of a particular case; and
- (b) is such that no other holder of such a licence would be unduly disadvantaged by the making of the modification.

19. Particulars of the applicant’s proposed arrangements for compliance with those standard conditions for a gas conveyance licence which are identified for this purpose.

Fit and proper person

20. One of the following:—

- (a) full particulars of all actual, pending or threatened regulatory enforcement actions that have been, are being, or are proposed to be taken by any competent authority against the applicant or any individuals listed in accordance with paragraph 6(b) (“relevant individuals”) or any parent undertaking, holding company or ultimate controller of the applicant; or
- (b) a statement signed by a senior officer of the applicant confirming that there is no such actual, pending or threatened regulatory enforcement action.

21. One of the following:—

- (a) full particulars of all criminal convictions of the applicant or any relevant individuals or any parent undertaking, holding company or ultimate controller of the applicant other than convictions for minor road traffic offences or in respect of which the convicted person has become rehabilitated under the Rehabilitation of Offenders (Northern Ireland) Order 1978(a) or the Rehabilitation of Offenders Act 1974(b); or
- (b) a statement signed by a senior officer of the applicant confirming that there are no such convictions.

22. One of the following:—

- (a) full particulars of all cautions given, prosecutions brought or threatened or any other action taken by a competent authority in respect of the applicant or any relevant individuals or any parent undertaking, holding company or ultimate controller of the applicant within the six years prior to the date of the application, in relation to any actual or alleged contravention of environmental (including town and country planning) legislation; or
- (b) a statement signed by a senior officer of the applicant confirming that there have been no such actions.

23. One of the following:—

- (a) full particulars of every application made by the applicant or any parent undertaking, holding company or ultimate controller of the applicant for a licence under the Order or the Electricity (Northern Ireland) Order 1992, or for any equivalent form of licence or authorisation in a jurisdiction other than Northern Ireland, where that application has been refused; or
- (b) a statement signed by a senior officer of the applicant confirming that there have been no such refusals.

24. One of the following:—

- (a) full particulars of every licence held by the applicant or any parent undertaking, holding company or ultimate controller of the applicant under the Order or the Electricity (Northern Ireland) Order 1992, or any equivalent form of licence or authorisation in a jurisdiction other than Northern Ireland, which has been revoked or threatened to be revoked; or
- (b) a statement signed by a senior officer of the applicant confirming that there has been no such revocation or threat of revocation.

25. One of the following:—

(a) S.I. 1978 No. 1908 (N.I. 27)
(b) 1974 c.53

- (a) full particulars of every instance of insolvency or corporate restructuring to which the applicant or any parent undertaking, holding company or ultimate controller of the applicant has been subject; or
- (b) a statement signed by a senior officer of the applicant confirming that there has been no such instance of insolvency or corporate restructuring.

26. One of the following:—

- (a) full particulars of all actual, pending or threatened recovery orders in relation to illegal State aid that have been made, are being made, or have been proposed by the European Commission in respect of the applicant or any parent undertaking, holding company or ultimate controller of the applicant; or
- (b) a statement signed by a senior officer of the applicant confirming that there have been no such actual, pending or threatened recovery orders.

Interpretation

27. In this schedule:—

“the 2006 Act” means the Companies Act 2006(a);

“annual accounts” has the meaning given by section 471 of the 2006 Act;

“auditors’ report” means a report prepared under section 495 of the 2006 Act;

“company” has the meaning given by section 1 of the 2006 Act;

“competent authority” means any minister, ministry, department, agency, authority, official or statutory office holder;

“domestic premises” means premises to which gas is conveyed at a rate which is reasonably expected not to exceed 2,500 therms a year;

“group” has the meaning given by section 474(1) of the 2006 Act;

“group accounts” means such accounts as are required to be prepared by section 399 of the 2006 Act;

“holding company” has the meaning given by section 1159 of the 2006 Act;

“parent undertaking” and “subsidiary undertaking” have the meanings given by section 1162 of the 2006 Act;

“senior officer” means the chairman, chief executive, other director or company secretary of the applicant;

“ultimate controller” means, in respect of the applicant:—

- (a) any holding company of the Licensee, which is not itself a subsidiary of another company; and/or
- (b) any person who (whether alone or with a person or persons connected with him) is in a position to control, or to exercise significant influence over, the policy of the applicant, or any holding company of the applicant, by virtue of:
 - (i) rights under contractual arrangements to which he is a party or of which he is a beneficiary;
 - (ii) rights of ownership (including rights attached to or deriving from securities or rights under a trust) which are held by him or of which he is a beneficiary,
 - (and for these purposes a person shall be considered to be connected with another person if they are party to any arrangement regarding the exercise of any such rights as are described in (i) and/or(ii)),

but shall exclude any director or employee of a corporate body in his capacity as such and any minister, ministry, department, agency, authority, official or statutory office holder.”

(a) 2006 c.46

SCHEDULE 3

“SCHEDULE 2

Regulation 4(1)(b)

Part II

Documents and other Particulars to accompany an Application for a Gas Storage Licence or Extension (see Note)

Financial information

1. If the applicant is a company copies of:—
 - (a) the most recent annual accounts of the applicant in respect of which an auditors’ report has been prepared, together with that report;
 - (b) the annual accounts of the applicant for the two financial years preceding that to which the accounts referred to in sub-paragraph (a) relate, together with the appropriate auditors’ reports;
 - (c) such interim accounts (whether audited or not) as may have been prepared in respect of a period more recent than that covered by any of the documents specified in sub-paragraph (a) and (b).
2. In addition to the documents specified at paragraph 1 if the applicant is a subsidiary undertaking, copies of:—
 - (a) the most recent group accounts in respect of the group of which the subsidiary undertaking forms part and in respect of which an auditors’ report has been prepared, together with that report;
 - (b) the group accounts in respect of that group for the two financial years preceding that to which the accounts referred to in sub-paragraph (a) relate, together with the appropriate auditors’ reports; and
 - (c) such interim accounts for that group (whether audited or not) as may have been prepared in respect of a period more recent than that covered by any of the documents specified in sub-paragraphs (a) and (b).
3. Where the documents specified at paragraph 2 do not include the consolidated accounts for any parent undertaking of the applicant established outside Northern Ireland, copies of such accounts, together with any auditors’ reports, as indicate the financial state of affairs of the group in question:—
 - (a) at the time of the application; and
 - (b) at the end of each of the three financial years preceding that time.

Note

If the application is for an extension of a licence, the information and documents specified at paragraphs 1 to 3 above and paragraphs 4 to 7 below need only be given in so far as, in any material respect they differ from or add to the most recent information or documents which were provided in relation to the same requirement:—

- (a) with an application made by the applicant in accordance with these Regulations; or
- (b) subsequent to such an application in pursuance of a condition of the applicant’s licence.

4. Where the applicant is not a company, such accounts or other information as indicate the financial state of affairs of the applicant, and of any person in whom effective control of the applicant resides:—

- (a) at the time of the application; and
- (b) at the end of each of the three financial years preceding that time.

5. A statement giving such further particulars (if any), whether by way of financial projections, sources of finance (including the amount of any borrowings required or being sought from banks or other lending institutions) or otherwise, as will, in conjunction with such information and documents as is provided in accordance with paragraphs 1 to 4, indicate whether the applicant would be likely to be able to finance the activities authorised by its licence if the application were granted.

Constitutional documents

6. Where the applicant is a company:—

- (a) copies of its Memorandum and Articles of Association or other constitutional documents;
- (b) the names of its directors as at the date of the application; and
- (c) the names of its principal shareholders as at the date of the application.

7. Details of each parent undertaking, holding company and ultimate controller of the applicant, and full details of the position of the applicant within any group structure.

Expertise of applicant

8. A statement giving such particulars of the applicant, and of any sub-contractors or other persons on whose expertise or experience the applicant proposes to rely, as may indicate whether the applicant or that other person has or will acquire the necessary skills to undertake the activities to which the licence or, as the case may be, the extension, relates and any other activities which are reasonably incidental thereto.

9. Details of any licence or authorisation held by the applicant in a jurisdiction other than Northern Ireland which is equivalent to a licence under the Order^(a) or the Electricity (Northern Ireland) Order 1992^(b).

Proposed location of storage facility

10. A map drawn to an appropriate scale showing the proposed location of the gas storage facility to which the application relates.

Development plan

11. A development plan in respect of the activities (“the authorised activities”) which would be authorised by the licence or, as the case may be, the extension if the application were granted, including details of:—

- (a) the type, design and capacity of the storage facility intended;
- (b) the intended regime for acceptance of gas for storage and export of gas to gas networks;
- (c) any intended arrangements for connection of the storage facility with any gas networks;
- (d) estimated total revenue from the authorised activities in each of the first 10 years of operation of the storage facility;
- (e) estimated total capital costs of the storage facility;

(a) S.I. 1996/275 (N.I. 2), relevant amendments were made by S.R. 2011 No. 155 and S.R. 2013 No. 92

(b) S.I. 1992 No. 231 (N.I. 1)

- (f) estimated total operating costs of the authorised activities in each of the first 10 years of operation of the storage facility, showing separately such costs in relation to fuel (including gas purchases), staff costs, rent and rates, development costs and insurance; and
- (g) net annual cashflow,

and stating, where appropriate, the assumptions underlying the figures provided.

Safety requirements

12. Such particulars as will indicate whether any gas storage facility in which the applicant was authorised to store gas if the application were granted would be operated safely.

Standard conditions

13. Any modification requested to any of the standard conditions for a gas storage licence and the grounds on which the applicant believes that any such modification:—

- (a) is requisite to meet the circumstances of a particular case; and
- (b) is such that no other holder of such a licence would be unduly disadvantaged if the modification were made.

14. Particulars of the applicant's proposed arrangements for compliance with those standard conditions for a gas storage licence which are identified for this purpose.

Independence of legal form, organisation and decision-making

15. Where an applicant forms part of a vertically integrated undertaking, one of the following:—

- (a) a statement identifying any reason of which the applicant is aware why it would be unable to satisfy the independence of legal form, organisation and decision-making requirement set out at Article 10A(8)(c) of the Order; or
- (b) a statement signed by a senior officer of the applicant confirming that there is no such reason of which the applicant is aware.

Fit and proper person

16. One of the following:—

- (a) full particulars of all actual, pending or threatened regulatory enforcement actions that have been, are being, or are proposed to be taken by any competent authority against the applicant or any individuals listed in accordance with paragraph 6(b) ("relevant individuals") or any parent undertaking, holding company or ultimate controller of the applicant; or
- (b) a statement signed by a senior officer of the applicant confirming that there is no such actual, pending or threatened regulatory enforcement action.

17. One of the following:—

- (a) full particulars of all criminal convictions of the applicant or any relevant individuals or any parent undertaking, holding company or ultimate controller of the applicant other than convictions for minor road traffic offences or in respect of which the convicted person has become rehabilitated under the Rehabilitation of

Offenders (Northern Ireland) Order 1978^(a) or the Rehabilitation of Offenders Act 1974^(b); or

- (b) a statement signed by a senior officer of the applicant confirming that there are no such convictions.

18. One of the following:—

- (a) full particulars of all cautions given, prosecutions brought or threatened or any other action taken by a competent authority in respect of the applicant or any relevant individuals or any parent undertaking, holding company or ultimate controller of the applicant within the six years prior to the date of the application, in relation to any actual or alleged contravention of environmental (including town and country planning) legislation; or
- (b) a statement signed by a senior officer of the applicant confirming that there have been no such actions.

19. One of the following:—

- (a) full particulars of every application made by the applicant or any parent undertaking, holding company or ultimate controller of the applicant for a licence under the Order or the Electricity (Northern Ireland) Order 1992, or for any equivalent form of licence or authorisation in a jurisdiction other than Northern Ireland, where that application has been refused; or
- (b) a statement signed by a senior officer of the applicant confirming that there have been no such refusals.

20. One of the following:—

- (a) full particulars of every licence held by the applicant or any parent undertaking, holding company or ultimate controller of the applicant under the Order or the Electricity (Northern Ireland) Order 1992, or any equivalent form of licence or authorisation in a jurisdiction other than Northern Ireland, which has been revoked or threatened to be revoked; or
- (b) a statement signed by a senior officer of the applicant confirming that there has been no such revocation or threat of revocation.

21. One of the following:—

- (a) full particulars of every instance of insolvency or corporate restructuring to which the applicant or any parent undertaking, holding company or ultimate controller of the applicant has been subject; or
- (b) a statement signed by a senior officer of the applicant confirming that there has been no such instance of insolvency or corporate restructuring.

22. One of the following:—

- (a) full particulars of all actual, pending or threatened recovery orders in relation to illegal State aid that have been made, are being made, or have been proposed by the European Commission in respect of the applicant or any parent undertaking, holding company or ultimate controller of the applicant; or
- (b) a statement signed by a senior officer of the applicant confirming that there have been no such actual, pending or threatened recovery orders.

(a) S.I. 1978 No. 1908 (N.I. 27)

(b) 1974 c. 53

Interpretation

23. In this Schedule:—

“the 2006 Act” means the Companies Act 2006(a);

“annual accounts” has the meaning given by section 471 of the 2006 Act;

“auditors’ report” means a report prepared under section 495 of the 2006 Act;

“company” has the meaning given by section 1 of the 2006 Act;

“competent authority” means any minister, ministry, department, agency, authority, official or statutory office holder;

“group” has the meaning given by section 474(1) of the 2006 Act;

“group accounts” means such accounts as are required to be prepared by section 399 of the 2006 Act;

“holding company” has the meaning given by section 1159 of the 2006 Act;

“parent undertaking” and “subsidiary undertaking” have the meanings given by section 1162 of the 2006 Act;

“senior officer” means the chairman, chief executive, other director or company secretary of the applicant;

“ultimate controller” means, in respect of the applicant:—

- (a) any holding company of the Licensee, which is not itself a subsidiary of another company; and/or
- (b) any person who (whether alone or with a person or persons connected with him) is in a position to control, or to exercise significant influence over, the policy of the applicant, or any holding company of the applicant, by virtue of:
 - (i) rights under contractual arrangements to which he is a party or of which he is a beneficiary;
 - (ii) rights of ownership (including rights attached to or deriving from securities or rights under a trust) which are held by him or of which he is a beneficiary,
(and for these purposes a person shall be considered to be connected with another person if they are party to any arrangement regarding the exercise of any such rights as are described in (i) and/or (ii)),

but shall exclude any director or employee of a corporate body in his capacity as such and any minister, ministry, department, agency, authority, official or statutory office holder.”

(a) 2006 c.46

SCHEDULE 4

“SCHEDULE 2

Regulation 4(1)(c)

Part III

Documents and other Particulars to accompany an Application for a Gas Supply Licence or Extension (see Note)

Financial information

1. If the applicant is a company copies of:—
 - (a) the most recent annual accounts of the applicant in respect of which an auditors’ report has been prepared, together with that report;
 - (b) the annual accounts of the applicant for the two financial years preceding that to which the accounts referred to in sub-paragraph (a) relate, together with the appropriate auditors’ reports;
 - (c) such interim accounts (whether audited or not) as may have been prepared in respect of a period more recent than that covered by any of the documents specified in sub-paragraph (a) and (b).
2. In addition to the documents specified at paragraph 1 if the applicant is a subsidiary undertaking, copies of:—
 - (a) the most recent group accounts in respect of the group of which the subsidiary undertaking forms part and in respect of which an auditor’s report has been prepared, together with that report;
 - (b) the group accounts in respect of that group for the two financial years preceding that to which the accounts referred to in sub-paragraph (a) relate, together with the appropriate auditors’ reports; and
 - (c) such interim accounts for the group (whether audited or not) as may have been prepared in respect of a period more recent than that covered by any of the documents specified in sub-paragraphs (a) and (b).
3. Where the documents specified at paragraph 2 do not include the consolidated accounts for any parent undertaking of the applicant established outside Northern Ireland, copies of such accounts together with any auditors’ reports, as indicate the financial state of affairs of the group in question:—
 - (a) at the time of the application; and
 - (b) at the end of each of the three financial years preceding that time.

Note

If the application is for an extension of a licence, the information and documents specified at paragraphs 1 to 3 above and paragraphs 4 to 6 below need only be given in so far as, in any material respect they differ from or add to the most recent information or documents which were provided in relation to the same requirement:—

- (a) with an application made by the applicant in accordance with these Regulations; or
- (b) subsequent to such an application in pursuance of a condition of the applicant’s licence.

4. Where the applicant is not a company, such accounts or other information as indicate the financial state of affairs of the applicant, and of any person in whom effective control of the applicant resides:—

- (a) at the time of the application; and
- (b) at the end of each of the three financial years preceding that time.

5. A statement giving such further particulars (if any), whether by way of financial projections, sources of finance (including the amount of any borrowings required or being sought from banks or other lending institutions) or otherwise, as will, in conjunction with such information and documents as is provided in accordance with paragraphs 1 to 4, indicate whether the applicant would be likely to be able to finance the activities authorised by its licence if the application were granted.

Constitutional documents

6. Where the applicant is a company:—

- (a) copies of its Memorandum and Articles of Association or other constitutional documents.
- (b) the names of its directors as at the date of the application; and
- (c) the names of its principal shareholders as at the date of the application.

7. Details of each parent undertaking, holding company and ultimate controller of the applicant, and full details of the position of the applicant within any group structure.

Description of consumers to be supplied

8. Where the applicant proposes to supply gas to premises in a particular area or in an area of a particular description, such particulars as are necessary so that the area can be adequately and readily identified, whether by reference to an accompanying map drawn to an appropriate scale or some generally accepted description such as the name of a townland(s).

9. Where the applicant proposes to supply gas to a particular class or description of premises such particulars as are necessary so that the relevant class or description of the premises can be adequately and readily identified.

10. Where the applicant proposes to supply gas to particular premises:—

- (a) the location of each of the premises in question, whether by name of the customer and postal address, by reference to an accompanying map drawn to an appropriate scale, or otherwise; and
- (b) the nature of each of the premises and the purpose for which they are used.

11. Where the applicant proposes to supply gas on, within or from the network otherwise than to premises, details of its intended supply business.

Development plan

12. A development plan in respect of the activities (“the authorised activities”) which would be authorised by the licence or, as the case may be, the extension, if the application were granted, including estimates for each of the first 5 years of:—

- (a) the amount of gas, in therms, expected to be supplied, separately identifying any amount to be supplied to domestic premises;
- (b) the total revenue from the authorised activities;
- (c) the total capital costs of the authorised activities;

- (d) the total operating costs of the authorised activities, showing separately such costs in relation to trading gas (including gas purchases and conveyance charges), staff costs, rent and rates, marketing costs and insurance; and
 - (e) net annual cashflow,
- and stating, where appropriate, the assumptions underlying the figures provided.

Acquisition and conveyance of gas

13. Particulars of the person or persons from whom the applicant intends to acquire the gas which he will supply, and particulars of the arrangements made for the conveyance of that gas.

Security and continuity of supply

14. A description of the applicant's proposed arrangements for ensuring security and continuity of supply for customers.

Exclusive authority

15. Any exclusive authority to supply gas sought and the justification for the conferral of such authority.

Standard conditions

16. Any modification requested to any of the standard conditions for a gas supply licence and the grounds on which the applicant believes that any such modification:—

- (a) is requisite to meet the circumstances of a particular case; and
- (b) is such that no other holder of such a licence would be unduly disadvantaged in competing if such a modification were made.

17. Particulars of the applicant's proposed arrangements for compliance with those standard conditions for a gas supply licence which are identified for this purpose.

Directions under the Energy Act 1976(a)

18. Details of the terms relating to pipeline system emergencies and directions under section 2(1)(b) of the Energy Act 1976 which the applicant proposes to include in contracts for the supply of gas in accordance with a standard condition for a gas supply licence.

Fit and proper person

19. One of the following:—

- (a) full particulars of all actual, pending or threatened regulatory enforcement actions that have been, are being, or are proposed to be taken by any competent authority against the applicant or any individuals listed in accordance with paragraph 6(b) ("relevant individuals") or any parent undertaking, holding company or ultimate controller of the applicant; or
- (b) a statement signed by a senior officer of the applicant confirming that there is no such actual, pending or threatened regulatory enforcement action.

20. One of the following:—

- (a) full particulars of all criminal convictions of the applicant or any relevant individuals or any parent undertaking, holding company or ultimate controller of

(a) 1976 c. 76

the applicant other than convictions for minor road traffic offences or in respect of which the convicted person has become rehabilitated under the Rehabilitation of Offenders (Northern Ireland) Order 1978(a) or the Rehabilitation of Offenders Act 1974(b); or

- (b) a statement signed by a senior officer of the applicant confirming that there are no such convictions.

21. One of the following:—

- (a) full particulars of all cautions given, prosecutions brought or threatened or any other action taken by a competent authority in respect of the applicant or any relevant individuals or any parent undertaking, holding company or ultimate controller of the applicant within the six years prior to the date of the application, in relation to any actual or alleged contravention of environmental (including town and country planning) legislation; or
- (b) a statement signed by a senior officer of the applicant confirming that there have been no such actions.

22. One of the following:—

- (a) full particulars of every application made by the applicant or any parent undertaking, holding company or ultimate controller of the applicant for a licence under the Order(c), or the Electricity (Northern Ireland) Order 1992(d), or for any equivalent form of licence or authorisation in a jurisdiction other than Northern Ireland, where that application has been refused; or
- (b) a statement signed by a senior officer of the applicant confirming that there have been no such refusals.

23. One of the following:—

- (a) full particulars of every licence held by the applicant or any parent undertaking, holding company or ultimate controller of the applicant under the Order or the Electricity (Northern Ireland) Order 1992, or any equivalent form of licence or authorisation in a jurisdiction other than Northern Ireland, which has been revoked or threatened to be revoked; or
- (b) a statement signed by a senior officer of the applicant confirming that there has been no such revocation or threat of revocation.

24. One of the following:—

- (a) full particulars of every instance of insolvency or corporate restructuring to which the applicant or any parent undertaking, holding company or ultimate controller of the applicant has been subject; or
- (b) a statement signed by a senior officer of the applicant confirming that there has been no such instance of insolvency or corporate restructuring.

25. One of the following:—

- (a) full particulars of all actual, pending or threatened recovery orders in relation to illegal State aid that have been made, are being made, or have been proposed by the European Commission in respect of the applicant or any parent undertaking, holding company or ultimate controller of the applicant; or
- (b) a statement signed by a senior officer of the applicant confirming that there have been no such actual, pending or threatened recovery orders.

(a) S.I. 1978 No. 1908 (N.I. 27)

(b) 1974 c. 53

(c) S.I. 1996/275 (N.I. 2), relevant amendments were made by S.R. 2011 No. 155 and S.R. 2013 No. 92

(d) S.I. 1992 No. 231 (N.I. 1)

Interpretation

26. In this schedule:—

“the 2006 Act” means the Companies Act 2006(a);

“annual accounts” has the meaning given by section 471 of the 2006 Act;

“auditors’ report” means a report prepared under section 495 of the 2006 Act;

“company” has the meaning given by section 1 of the 2006 Act;

“competent authority” means any minister, ministry, department, agency, authority, official or statutory office holder;

“domestic premises” means premises to which gas is conveyed at a rate which is reasonably expected not to exceed 2,500 therms a year;

“group” has the meaning given by section 474(1) of the 2006 Act;

“group accounts” means such accounts as are required to be prepared by section 399 of the 2006 Act;

“holding company” has the meaning given by section 1159 of the 2006 Act;

“parent undertaking” and “subsidiary undertaking” have the meanings given by section 1162 of the 2006 Act;

“senior officer” means the chairman, chief executive, other director or company secretary of the applicant;

“ultimate controller” means, in respect of the applicant:—

(a) any holding company of the Licensee, which is not itself a subsidiary of another company; and/or

(b) any person who (whether alone or with a person or persons connected with him) is in a position to control, or to exercise significant influence over, the policy of the applicant, or any holding company of the applicant, by virtue of:—

(i) rights under contractual arrangements to which he is a party or of which he is a beneficiary;

(ii) rights of ownership (including rights attached to or deriving from securities or rights under a trust) which are held by him or of which he is a beneficiary,

(and for these purposes a person shall be considered to be connected with another person if they are party to any arrangement regarding the exercise of any such rights as are described in (i) and/or (ii),

but shall exclude any director or employee of a corporate body in his capacity as such and any minister, ministry, department, agency, authority, official or statutory office holder.”

(a) 2006 c.46

SCHEDULE 5

“SCHEDULE 2

Regulation 4(1)(d)

Part IV

Documents and other Particulars to accompany an Application for an LNG Licence or Extension

Financial information

1. If the applicant is a company copies of:—
 - (a) the most recent annual accounts of the applicant in respect of which an auditors’ report has been prepared, together with that report;
 - (b) the annual accounts of the applicant for the two financial years preceding that to which the accounts referred to in sub-paragraph (a) relate, together with the appropriate auditors’ reports;
 - (c) such interim accounts (whether audited or not) as may have been prepared in respect of a period more recent than that covered by any of the documents specified in sub-paragraph (a) and (b).
2. In addition to the documents specified at paragraph 1, if the applicant is a subsidiary undertaking, copies of:—
 - (a) the most recent group accounts in respect of the group of which the subsidiary undertaking forms part and in respect of which an auditors’ report has been prepared, together with that report;
 - (b) the group accounts in respect of that group for the two financial years preceding that to which the accounts referred to in sub-paragraph (a) relate, together with the appropriate auditors’ reports; and
 - (c) such interim accounts for that group (whether audited or not) as may have been prepared in respect of a period more recent than that covered by any of the documents specified in sub-paragraphs (a) and (b).
3. Where the documents specified at paragraph 2 do not include the consolidated accounts for any parent undertaking of the applicant established outside Northern Ireland, copies of such accounts, together with any auditors’ reports, as indicate the financial state of affairs of the group in question:—
 - (a) at the time of the application; and
 - (b) at the end of each of the three financial years preceding that time.

Note

If the application is for an extension of a licence, the information and documents specified at paragraphs 1 to 3 above and paragraphs 4 to 7 below need only be given in so far as, in any material respect they differ from or add to the most recent information or documents which were provided in relation to the same requirement:—

- (a) with an application made by the applicant in accordance with these Regulations; or
 - (b) subsequent to such an application in pursuance of a condition of the applicant’s licence.
4. Where the applicant is not a company, such accounts or other information as indicate the financial state of affairs of the applicant, and of any person in whom effective control of the applicant resides:—

- (a) at the time of the application; and
- (b) at the end of each of the three financial years preceding that time.

5. A statement giving such further particulars (if any), whether by way of financial projections, sources of finance (including the amount of any borrowings required or being sought from banks or other lending institutions) or otherwise, as will, in conjunction with such information and documents as is provided in accordance with paragraphs 1 to 4, indicate whether the applicant would be likely to be able to finance the activities authorised by its licence if the application were granted.

Constitutional documents

6. Where the applicant is a company:—

- (a) copies of its Memorandum and Articles of Association or other constitutional documents;
- (b) the names of its directors as at the date of the application; and
- (c) the names of its principal shareholders as at the date of the application.

7. Details of each parent undertaking, holding company and ultimate controller of the applicant, and full details of the position of the applicant within any group structure.

Expertise of applicant

8. A statement giving such particulars of the applicant, and of any sub-contractors or other persons on whose expertise or experience the applicant proposes to rely, as may indicate whether the applicant or that other person has or will acquire the necessary skills to undertake the activities to which the licence, or, as the case may be, the extension, relates and any other activities which are reasonably incidental thereto.

9. Details of any licence or authorisation held by the applicant in a jurisdiction other than Northern Ireland which is equivalent to a licence under the Order^(a) or the Electricity (Northern Ireland) Order 1992^(b).

Proposed location of LNG facility

10. A map drawn to an appropriate scale showing the proposed location of the LNG facility to which the application relates.

Development plan

11. A development plan in respect of the activities (“the authorised activities”) which would be authorised by the licence or, as the case may be, the extension if the application were granted, including details of:—

- (a) the type, design and capacity of the LNG facility intended;
- (b) the intended regime for acceptance of natural gas for liquefaction/re-gasification and export of gas to gas networks;
- (c) any intended arrangements for connection of the LNG facility with any gas networks;
- (d) estimated total revenue from the authorised activities in each of the first 10 years of operation of the LNG facility;
- (e) estimated total capital costs of the LNG facility;

(a) S.I. 1996/275 (N.I. 2), relevant amendments were made by S.R. 2011 No. 155 and S.R. 2013 No. 92

(b) S.I. 1992 No. 231 (N.I. 1)

- (f) estimated total operating costs of the authorised activities in each of the first 10 years of operation of the LNG facility, showing separately such costs in relation to fuel (including gas purchases), staff costs, rent and rates, development costs and insurance; and
 - (g) net annual cashflow,
- and stating, where appropriate, the assumptions underlying the figures provided.

Safety requirements

12. Such particulars as will indicate whether any LNG facility in which the applicant was authorised to process LNG if the application were granted would be operated safely.

Standard conditions

13. Any modification requested to any of the standard conditions for an LNG licence and the grounds on which the applicant believes that any such modification:—

- (a) is requisite to meet the circumstances of a particular case; and
- (b) is such that no other holder of such a licence would be unduly disadvantaged if the modification were made.

14. Particulars of the applicant's proposed arrangements for compliance with those standard conditions for an LNG licence which are identified for this purpose.

Fit and proper person

15. One of the following:—

- (a) full particulars of all actual, pending or threatened regulatory enforcement actions that have been, are being, or are proposed to be taken by any competent authority against the applicant or any individuals listed in accordance with paragraph 6(b) ("relevant individuals") or any parent undertaking, holding company or ultimate controller of the applicant; or
- (b) a statement signed by a senior officer of the applicant confirming that there is no such actual, pending or threatened regulatory enforcement action.

16. One of the following:—

- (a) full particulars of all criminal convictions of the applicant or any relevant individuals or any parent undertaking, holding company or ultimate controller of the applicant other than convictions for minor road traffic offences or in respect of which the convicted person has become rehabilitated under the Rehabilitation of Offenders (Northern Ireland) Order 1978(a) or the Rehabilitation of Offenders Act 1974(b); or
- (b) a statement signed by a senior officer of the applicant confirming that there are no such convictions.

17. One of the following:—

- (a) full particulars of all cautions given, prosecutions brought or threatened or any other action taken by a competent authority in respect of the applicant or any relevant individuals or any parent undertaking, holding company or ultimate controller of the applicant within the six years prior to the date of the application, in relation to any actual or alleged contravention of environmental (including town and country planning) legislation; or

(a) S.I. 1978 No. 1908 (N.I. 27)

(b) 1974 c. 53

- (b) a statement signed by a senior officer of the applicant confirming that there have been no such actions.

18. One of the following:-

- (a) full particulars of every application made by the applicant or any parent undertaking, holding company or ultimate controller of the applicant for a licence under the Order or the Electricity (Northern Ireland) Order 1992, or for any equivalent form of licence or authorisation in a jurisdiction other than Northern Ireland, where that application has been refused; or
- (b) a statement signed by a senior officer of the applicant confirming that there have been no such refusals.

19. One of the following:—

- (a) full particulars of every licence held by the applicant or any parent undertaking, holding company or ultimate controller of the applicant under the Order or the Electricity (Northern Ireland) Order 1992, or any equivalent form of licence or authorisation in a jurisdiction other than Northern Ireland, which has been revoked or threatened to be revoked; or
- (b) a statement signed by a senior officer of the applicant confirming that there has been no such revocation or threat of revocation.

20. One of the following:—

- (a) full particulars of every instance of insolvency or corporate restructuring to which the applicant or any parent undertaking, holding company or ultimate controller of the applicant has been subject; or
- (b) a statement signed by a senior officer of the applicant confirming that there has been no such instance of insolvency or corporate restructuring.

21. One of the following:—

- (a) full particulars of all actual, pending or threatened recovery orders in relation to illegal State aid that have been made, are being made, or have been proposed by the European Commission in respect of the applicant or any parent undertaking, holding company or ultimate controller of the applicant; or
- (b) a statement signed by a senior officer of the applicant confirming that there have been no such actual, pending or threatened recovery orders.

Interpretation

22. In this schedule:—

“the 2006 Act” means the Companies Act 2006(a);

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“group” has the meaning given by section 474(1) of the 2006 Act;

“group accounts” means such accounts as are required to be prepared by section 399 of the 2006 Act;

“holding company” has the meaning given by section 1159 of the 2006 Act;

“parent undertaking” and “subsidiary undertaking” have the meanings given by section 1162 of the 2006 Act;

“senior officer” means the chairman, chief executive, other director or company secretary of the applicant;

“ultimate controller” means, in respect of the applicant:—

- (a) any holding company of the Licensee, which is not itself a subsidiary of another company; and/or
- (b) any person who (whether alone or with a person or persons connected with him) is in a position to control, or to exercise significant influence over, the policy of the applicant, or any holding company of the applicant, by virtue of:
 - (i) rights under contractual arrangements to which he is a party or of which he is a beneficiary;
 - (ii) rights of ownership (including rights attached to or deriving from securities or rights under a trust) which are held by him or of which he is a beneficiary,
(and for these purposes a person shall be considered to be connected with another person if they are party to any arrangement regarding the exercise of any such rights as are described in (i) and/or (ii)),

but shall exclude any director or employee of a corporate body in his capacity as such and any minister, ministry, department, agency, authority, official or statutory office holder.”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Gas (Applications for Licences and Extensions) Regulations (Northern Ireland) 1996 (“the principal Regulations”).

The Regulations provide for—

- (i) insertion of references, where appropriate, to arrangements for applying for the newly created LNG licence;
- (ii) an update of forms for applying for gas conveyance, gas storage and gas supply licences and inclusion of a new form for applying for an LNG licence, in particular to include a declaration to be completed and signed by the applicant; and
- (iii) an update of Schedule 2 Parts I to III of the principal Regulations which list ‘Documents and other Particulars’ to accompany an application for a gas conveyance, gas storage or gas supply licence respectively and insertion of a new Part IV into Schedule 2 listing ‘Documents and other Particulars to accompany an Application for an LNG Licence’.

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