
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Electricity (Northern Ireland) Order 1992 (“the Electricity Order”), the Gas (Northern Ireland) Order 1996 (“the Gas Order”), the Energy (Northern Ireland) Order 2003 (“the Energy Order”) and the Electricity (Single Wholesale Market)(Northern Ireland) Order 2007 (“the SEM Order”) to ensure that they conform with the requirements of—

- (a) Directive [2009/72/EC](#) of the European Parliament and of the Council concerning common rules for the internal market in electricity and repealing Directive [2003/54/EC](#) (“the Electricity Directive”);
- (b) Directive [2009/73/EC](#) of the European Parliament and of the Council concerning common rules for the internal market in natural gas and repealing Directive [2003/55/EC](#) (“the Gas Directive”);
- (c) Regulation (EC) No. [714/2009](#) of the European Parliament and of the Council of 13th July 2009 on conditions for access to the network of cross border exchanges in electricity and repealing Regulation (EC) No. [1228/2003](#) (“the Electricity Regulation”); and
- (d) Regulation (EC) No. [715/2009](#) of the European Parliament and of the Council of 13th July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No. [1775/2005](#) (“the Gas Regulation”).

Part I amends the Energy Order. In particular—

- (a) the definitions of the Electricity Regulation and the Gas Regulation are expanded so that the powers of the Northern Ireland Authority for Utility Regulation (“the Authority”) to impose penalties under Part VI of that Order apply in relation to breaches of those Regulations as they are amended from time to time (Regulation 3(a));
- (b) the duties of the Authority in consulting and co-operating with other Authorities are realigned to separate out this function from the functions of the Authority under the Single Electricity Market regime established by the SEM Order (Regulation 4);
- (c) the Authority is expressly placed under an obligation, when carrying out its functions relating to the Single Electricity Market, to fulfil the objectives set out in Article 36(a) to (h) of the Electricity Directive (Regulation 5).

Part II amends the SEM Order to ensure that the SEM Committee fully meets the requirements of the Electricity Directive for the independence of that Committee and its members.

Part III amends the Gas Order. In particular—

- (a) It introduces a separate prohibition on the unauthorised operation of a Liquefied Natural Gas facility (LNG), creates exemptions from that prohibition and a licensing regime for such operations. It amends Article 10A of the Gas Order requiring inclusion of appropriate conditions in LNG licences to ensure that the authorised activities comply with various requirements of the Gas Directive. The Order also sets out a requirement for the consent of the Department for the construction of an LNG facility and for the consent of the Authority in relation to any increase in the capacity of an LNG facility. The Regulations also make a number of consequential changes so that the provisions in the Gas Order relating to—
 - (i) standard conditions of licences;
 - (ii) assignment of licences;

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (iii) powers of licence holders; and
- (iv) modification of licences,

reflect the introduction of the new licensing regime (Regulations 13, 14, 17, 18(4) and 20 to 27).

- (b) The Regulations also amend Article 27A (Dispute resolution) to bring within its scope disputes concerning the holder of an LNG licence or an LNG exemption and to provide for costs orders in relation to any dispute dealt with under that provision (Regulation 28).

Apart from the amendments relating to LNG, Part III also amends the Gas Order as follows—

1. The provisions relating to exemptions under Article 7 are amended to expressly include an obligation on the Department to include conditions to ensure that the activities authorised by the exemptions are carried out in compliance with the Gas Directive and to provide for the revocation of the exemption in any case where the conditions are not complied with (Regulation 15).

2. The Regulations also provide for the classification of closed distribution systems and, where such a system is so classified, any conditions imposed on the holder of a conveyance exemption requiring that tariffs for the use of his distribution system, or the methodologies underlying them, are approved by the Authority do not have effect in certain circumstances (Regulation 16).

3. The Regulations also provide for the Authority to grant an exemption to holders of a gas conveyance licence or an LNG licence from any condition in such a licence requiring system access. This exemption may only be granted where allowing system access would cause serious financial difficulties because of take or pay commitments of the licence holder under one or more gas purchase contracts (Regulation 19).

4. The Regulations also amend Article 10A to clarify that, in the case of the holder of a gas conveyance licence forming part of a vertically integrated undertaking, the requirement for that person to comply with the requirements of Article 26 of the Directive for independence does not apply where he distributes gas to fewer than 100,000 customers (Regulation 18(1)).

5. The Regulations also provide for the imposition of licence conditions on the holder of a gas conveyance licence forming part of a vertically integrated undertaking to require that, where he participates in a joint undertaking to promote regional or bilateral solidarity the requirements of Article 7(4) of the Directive for a compliance programme are met (Regulation 18(2)).

6. The Regulations also provide for the holder of a licence who proposes to provide new gas infrastructure to be exempted from certain requirements of the Directive relating to certification of the unbundling of transmission system operators; to third party access to transmission and distribution systems, storage and LNG facilities; and to tariffs and the underlying methodology for connection and access to pipelines or facilities or the provision of balancing services (Regulation 30).

Part IV corrects a number of minor errors in or in relation to the Gas and Electricity Orders and, in Regulation 33, extends the time limit for the modification of existing electricity and gas licences to ensure compliance with the provisions of the Electricity Directive and the Gas Directive.