

**EXPLANATORY MEMORANDUM TO**  
**Gas (Internal Markets) Regulations (Northern Ireland) 2020**

**SR 2020 No. 279**

**1. Introduction**

- 1.1. This Explanatory Memorandum has been prepared by the Department for the Economy ('the Department') to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under section 2(2) of the European Communities Act 1972 and is subject to the negative resolution procedure.

**2. Purpose**

- 2.1. The Gas (Internal Markets) Regulations (Northern Ireland) 2020 will amend some existing energy legislation in order to transpose the requirements of EU Gas Directive 2009/73/EC ('the 2009 Gas Directive') as amended by EU Directive 2019/692 ('the 2019 Gas Directive Amendment').

**3. Background**

- 3.1. The Department made the Gas and Electricity (Internal Markets) Regulations (NI) 2011, and the Gas and Electricity (Internal Markets) (Amendment) Regulations (NI) 2013, to implement the requirements of the 2009 Gas Directive which represented a major step in the creation of fully competitive, liberalised internal markets in both natural gas and electricity in the European Union.
- 3.2. The 2019 Gas Directive Amendment amended some aspects of the Gas Directive in order to improve the functioning of the European Union's internal energy market, particularly in relation to arrangements for gas pipe-lines which connect a Member State with another country outside the European Union ('a third country'). The aim is to ensure that all major gas pipe-lines entering the European Union comply with EU rules; are operated with the same levels of transparency; are accessible to other operators; and are operated in an efficient way.
- 3.3. There are currently no existing or planned gas pipe-lines connecting Northern Ireland with a third country but this Rule will make some minor changes to The Gas (NI) Order 1996 ('the Gas Order') and The Energy (NI) Order 2003 ('the Energy Order') to ensure that NI energy legislation reflects the requirements of the 2019 Gas Directive Amendment. These changes include updating the definition of the "Gas Directive" in the Gas Order and the Energy Order; making provision for gas conveyance licences to include, where appropriate, a condition requiring the holder to comply with Gas Directive requirements for third party access to upstream gas pipe-line networks; and ensuring that appropriate legislative provision is made in respect of the Northern Ireland Authority for Utility Regulation

('NIAUR') consulting and cooperating with relevant authorities in other countries when appropriate.

- 3.4. The Rule will also address an unintended legislative gap in provision for regulating third party access to a gas storage facility sited in the territorial sea adjacent to Northern Ireland in accordance with 2009 Gas Directive requirements for access to storage. NIAUR's powers to licence and thereby regulate access to a gas storage facility do not currently extend to the NI territorial sea so the Rule will amend the definition of "gas storage facility" in the Gas Order, and make a corresponding amendment to the Energy Act 2008, in order to provide for this. However, NIAUR's powers in respect of granting a consent to construct a gas storage facility under Article 37 of the Gas Order, or giving a direction in respect of an increase in capacity of a gas storage facility under Article 38 of the Gas Order, will not be extended to a facility in the NI territorial sea. This will avoid an overlap with the UK-wide consenting regime for offshore gas under the Energy Act 2008. As there are currently no existing or planned gas storage facilities in the NI territorial sea, it is not anticipated that these legislative amendments will have any immediate practical implications.
- 3.5. The Rule will further make a number of 'tidying up' provisions, including extending Article 38A of the Gas Order to cover LNG facilities as well as gas pipe-lines and gas storage facilities, and replacing some outdated references to "the Director" in a number of Articles in the Gas Order with "the Authority" (meaning NIAUR).

#### **4. Consultation**

- 4.1. A consultation paper outlining the proposed legislative measures, together with draft impact assessments, was placed on the Department's website (<https://www.economy-ni.gov.uk/consultations>) on 24 September 2020 with responses invited by 23 October 2020. Information on the consultation issued to key stakeholders in the energy sector; MLAs and MPs; and over 200 organisations on the Department's equality consultation list. The Department's Twitter feed also alerted interested parties to the consultation. During the consultation period, the Department responded to three requests for clarification about the proposed measures.
- 4.2. Two written responses were submitted to the consultation. The first provided information on climate change and cautioned against interpreting the proposed measures as an opportunity to expand the gas network in Northern Ireland. The second did not comment on the specific proposals but objected to the consultation on the basis that it included measures aimed at promoting gas storage in the NI territorial sea which had not been subject to appropriate assessment, including for environmental impacts.
- 4.3. This Rule is not, however, being taken forward to promote either gas network extension or gas storage. A regulatory regime for gas transmission pipe-lines, and for on-shore gas storage (including for the proposed Islandmagee gas storage project at Larne Lough), is already established. The measures are instead designed to ensure effective regulation of any future gas transmission pipe-line connecting with a third

country, or gas storage facility sited in the NI territorial sea, in line with EU Directive requirements.

## **5. Equality Impact**

- 5.1. In accordance with the requirements of Section 75 of the Northern Ireland Act 1998, the Department carried out an equality screening exercise on the proposed legislative measures which concluded that a full Equality Impact Assessment was not required. The amendments to existing energy legislation which will be made through this Rule are not considered significant, are largely technical in nature, and are not anticipated to have any practical impact on energy consumers. No equality issues were raised in response to the Department's consultation paper.

## **6. Regulatory Impact**

- 6.1. A Regulatory Impact Assessment ('RIA') was also carried out on the proposed legislative measures and is attached to this memorandum.
- 6.2. The RIA found that, as Northern Ireland does not have any gas transmission pipe-lines with a third country, or gas storage facilities in the adjacent territorial sea, and there are currently no plans for such infrastructure, implementation of the proposed legislative measures is unlikely to have any immediate practical consequences. The measures should, however, provide clarity on regulatory arrangements for owners/operators and potential users in respect of any future gas infrastructure falling within these categories. The measures would, for example, provide a basis for agreeing terms and conditions for third party access to a future gas storage facility in the NI territorial sea and, in cases where an owner and a potential user of a facility are unable to reach agreement, for applying to NIAUR for direction. It is not expected that this regime will create additional costs for business beyond those already applicable to a gas storage facility elsewhere in Northern Ireland or Great Britain.

## **7. Financial Implications**

- 7.1. As it is not anticipated that this Rule will have any immediate practical impacts, it is not likely to result in increased costs for business. It will provide a basis for regulating, as appropriate, gas transmission pipe-lines which connect Northern Ireland with a third country, and gas storage facilities in the NI territorial sea. On this basis, there could be, in the event of proposals coming forward for such infrastructure in the future, some small additional administrative costs for NIAUR.
- 7.2. As the Department is obliged under European Law to fully implement the 2009 Gas Directive, as amended by the 2019 Gas Directive Amendment, up to the end of the transition period following the UK's exit from the European Union, failure to fully do so by implementing this Rule could be deemed a breach of such legal obligations and expose the UK, as a Member State, to the risk of infraction proceedings and, potentially, to fines.

## **8. Section 24 of the Northern Ireland Act 1998**

- 8.1. The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied this Rule does not contravene the Act.

## **9. EU Implications**

- 9.1. It is considered that this Rule does the minimum necessary to ensure Northern Ireland's compliance with the 2009 Gas Directive as amended by the 2019 Gas Directive Amendment and avoid infraction proceedings.

## **10. Parity or Replicatory Measure**

- 10.1. This Rule transposes the 2009 EU Gas Directive, as amended by the 2019 Gas Directive Amendment. The Gas Directive Amendment has already been transposed in GB through the Gas (Internal Markets) Regulations 2020. The Department has taken the GB regulations into account in drawing up the proposed Regulations for NI and has liaised with the Department for Business, Energy and Industrial Strategy ('BEIS') as part of this process, particularly in relation to the amendment to the Energy Act 2008 which is necessary to provide for the Utility Regulator to regulate third party access to a gas storage facility in the NI territorial sea.

## **11. Additional Information**

- 11.1. Not applicable