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STATUTORY INSTRUMENTS

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**2019 No. 530**

**The Electricity and Gas etc. (Amendment  
etc.) (EU Exit) Regulations 2019**

**PART 4**

**Amendment of Northern Ireland legislation**

**The Gas (Northern Ireland) Order 1996**

**118.** For Article 10A (compliance with community obligations) substitute—

**“Licences: further conditions**

**10A.—**(1) The conditions included in a licence must—

- (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 technical safety criteria and rules which are objective and non-discriminatory;
- (c) require the licence holder to keep accounts in accordance with requirements corresponding to the requirements in Article 31 of the Directive and to have them audited in accordance with those requirements and must 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.

(2) For the purposes of paragraph (1)(c), the reference to Article 31 of the Directive is to be read as a reference to that Article with the modifications that—

- (a) in paragraph (2), in the first sub-paragraph, the words from “adopted pursuant” to the end are omitted; and
- (b) in paragraph (3), the third sentence is omitted.

(3) Conditions included in a licence under Article 8(1)(a) must, having regard to the activities authorised by the licence, require the holder—

- (a) where the holder balances gas inputs to and offtakes from any pipeline used under the licence, to adopt, follow, and make publicly available, rules which are objective, transparent and non-discriminatory;
- (b) to procure energy used for carrying out the holder’s functions in accordance with procedures which are transparent, non-discriminatory and market based;
- (c) where appropriate in relation to the holder’s circumstances, to carry out tasks corresponding to the tasks mentioned in Article 25(1) of the Directive;

- (d) to refrain from discriminating between persons or classes of person using or intending to use any pipe-line, facility or associated apparatus operated for the purposes of the licence;
  - (e) to provide such persons with the information they need for efficient access to and use of the system;
  - (f) to provide any other licence holder mentioned in Article 25(3) of the Directive with sufficient information to achieve an outcome that corresponds to the outcome mentioned in that provision;
  - (g) to comply with requirements for system access corresponding to the requirements mentioned in Article 32 of the Directive (as read with Article 2 of the Commission Decision);
  - (h) to take any measures necessary for the purpose of ensuring that information necessary for effective competition and for the effective functioning of the market is made public;
  - (i) to facilitate (to the extent within the holder's control) the ability of customers to change suppliers within 3 weeks;
  - (j) to facilitate (to the extent within the holder's control) the ability of customers to have access to consumption data.
- (4) For the purposes of paragraph (3)(g), the reference to Article 32 of the Directive is to be read as a reference to that Article with the modifications that—
- (a) for references to “Member States” there were substituted references to “the Department”;
  - (b) in paragraph (1), for the words “in accordance with Article 41 by a regulatory authority referred to in Article 39(1)” there were substituted “by the Authority”;
  - (c) in paragraph (3), for the reference to “Community competition rules” there were substituted a reference to “retained EU law relating to competition”.
- (5) Conditions included in a licence under Article 8(1)(a) must—
- (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 of 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 (within the meaning given in Article 7D) 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 comply with requirements which correspond to those mentioned in points (a) and (d) of paragraph 1 of Annex I to the Directive; and
    - (ii) requirements corresponding to those mentioned in points (b), (c) and (g) of paragraph 1 of Annex I to the Directive are complied with in relation to the customer.

(6) For the purposes of paragraph (5)(b)(ii), point (g) of paragraph 1 of Annex I to the Directive is to be read as if for the words “the national legislation applicable” there were substituted “the Gas (Northern Ireland) Order 1996”.

(7) The conditions included in a licence under Article 8(1)(a) granted to a person forming part of a vertically integrated undertaking must—

- (a) require that person to continue to be independent in terms of that person’s legal form, organisation and decision-making in relation to that person’s activities under the licence and to comply with requirements corresponding to those mentioned in Article 26(2) of the Directive for independence in terms of organisation and decision making, in particular the minimum criteria laid down thereby and to comply with requirements corresponding to the requirements in relation to communication and branding mentioned in Article 26(3) of the Directive; and
- (b) if the person carries on combined activity as the holder of a licence under Article 8(1)(a), (b), (c) and (d), require that person to comply with requirements corresponding to those mentioned in Article 29 of the Directive for independence in terms of legal form, organisation and decision making in relation to activities under the licence.

(8) Paragraph (7)(a) does not prevent a person from acting as the holder of a licence of more than one type under Article 8(1).

(9) For the purposes of paragraph (7)—

- (a) Article 26(2) of the Directive is to be read as if—
  - (i) in point (c), for the words “in accordance with Article 41(6)”, there is substituted “by the Authority”;
  - (ii) in point (d), for the words “to the regulatory authority referred to in Article 39(1)”, there is substituted “to the Authority”;
- (b) Article 26(3) of the Directive is to be read as if for the words from “the Member States” to “or other competent bodies” there were substituted “the Authority must monitor all the activities of the distribution system operator”.

(10) Paragraph (7)(a) does not apply in the case of a licence holder who does not supply gas to persons or premises, but who conveys gas from one place to another through one or more pipeline systems to which there are fewer than 100,000 premises connected.

(11) The conditions included in a licence under Article 8(1)(a) must—

- (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 the ownership unbundling requirement in Article 8G to continue 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 requirements corresponding to those mentioned 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 requirements corresponding to those mentioned in Article 14(4) or 14(5) of the Directive which are relevant to the holder continue to be met; and

- (c) 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.
- (12) For the purposes of paragraph (11)—
- (a) the references to Article 14 are to be read as references to that provision as if it contained the modifications in Article 8F(9) of this Order;
  - (b) Article 14(4) is to be read as if the words “in accordance with this Chapter” were omitted;
  - (c) Article 14(5) and 15(2) are to be read as if references to “the regulatory authority” were references to “the Authority”;
  - (d) paragraph (1) of Article 15 is to be read as if, in the second sentence, “pursuant to Article 33” were omitted;
  - (e) item (c) in Article 15(2) is to be read as if for the words “in accordance with Article 41(6)”, there were substituted “by the Authority”.
- (13) The conditions included in a licence under Article 8(1)(a), as appropriate having regard to the activities authorised by the licence, must require the holder to carry out tasks corresponding to those mentioned in Article 13(1) of the Directive.
- (14) The conditions included in a licence under Article 8(1)(b) must require the holder, as appropriate, having regard to the activities authorised by the licence—
- (a) to carry out tasks corresponding to the tasks mentioned in Article 13(1) of the Directive;
  - (b) to comply with requirements corresponding to the requirements for access to storage mentioned in Article 33 of the Directive in accordance with criteria published by the Authority; and
  - (c) where the person forms part of a vertically integrated undertaking, to comply with requirements corresponding to those mentioned in Article 15 of the Directive concerning independence in terms of legal form, organisation and decision-making in relation to its activities under the licence and, in particular, to comply with minimum criteria corresponding to those mentioned in Article 15(2) of the Directive.
- (15) For the purposes of paragraph (14)—
- (a) the reference to Article 15 of the Directive is to be read as a reference to that Article with the modifications set out in paragraph (12)(c), (d) and (e);
  - (b) Article 33 is to be read as if—
    - (i) any reference to “Member States”, and to “the regulatory authorities” in Article 33 were a reference to “the Department”;
    - (ii) in paragraph (1), the third sub-paragraph were omitted;
    - (iii) in paragraph (3), in the second sub-paragraph the words from “by 1 January 2005” were a reference to “on an annual basis”.
- (16) The conditions included in a licence under Article 8(1)(c) must—
- (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 information (including information about the contractual terms and conditions offered to such consumers);

- (c) ensure that all customers can exercise their freedom to purchase gas from the supplier of their choice;
  - (d) ensure that persons exercising that freedom are not charged therefor and are able to use transparent, simple and inexpensive complaints procedures;
  - (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 the 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;
  - (g) ensure that customers have consumption data at their disposal and are able to give access to that data to other suppliers;
  - (h) ensure that customers have access to information about sources of energy efficiency advice;
  - (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;
  - (j) ensure that household customers are offered a wide choice of payment methods which do not unduly discriminate between customers;
  - (k) ensure that the terms and conditions of supply contracts offered by the licence holder to household customers comply with requirements corresponding to those mentioned in points (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;
  - (m) ensure that household customers receive a final bill following changing suppliers no later than six weeks from the date on which the change occurs; and
  - (n) ensure that the holder of the licence for at least five years maintains records of data corresponding to that required by Article 44 of the Directive.
- (17) Conditions included in a licence under Article 8(1)(d) must require the holder as appropriate having regard to the activities authorised by the licence—
- (a) to carry out tasks corresponding to the tasks mentioned in Article 13(1) of the Directive;
  - (b) to keep accounts in terms corresponding to the requirements of Article 31 of the Directive and to have them audited in a manner corresponding to those requirements; and
  - (c) to comply with requirements for system access corresponding to those mentioned in Article 32 of the Directive (as read with Article 2 of the Commission Decision).
- (18) Conditions included in a licence under Article 8(1)(d) must confer on the Department or the Authority a right of access to the licence holder's accounts for the purposes of ensuring compliance with the requirements mentioned in paragraph (17).
- (19) For the purposes of paragraph (17)—
- (a) the reference to Article 31 of the Directive is to be read as a reference to that Article with the modifications set out in paragraph (2);
  - (b) the reference to Article 32 of the Directive is to be read as a reference to that Article with the modifications set out in paragraph (4).
- (20) Conditions included in a licence under Article 8(1) must ensure that the holder—

- (a) does not disclose commercially sensitive information obtained in the course of carrying out its business, except in accordance with a legal duty to disclose information; and
- (b) prevents information about its own activities which might be commercially advantageous from being disclosed in a discriminatory manner.”.