STATUTORY RULES OF NORTHERN IRELAND

2013 No. 92

GAS
ELECTRICITY

The Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2013

Made - - - -	*28th March 2013*
Coming into operation	*12th April 2013*

The Department of Enterprise, Trade and Investment ("the Department") makes the following Regulations in exercise of the powers conferred upon it by section 2(2) of the European Communities Act 1972(**1**) ("the 1972 Act") as read with paragraph 1A of Schedule 2 to the 1972 Act.

The Department is designated for the purposes of section 2(2) of the 1972 Act in relation to energy and energy sources(**2**).

These Regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Department that it is expedient for the references to Regulation (EC) No. 714/2009 of the European Parliament and of the Council on conditions for access to the network for cross border exchanges in electricity and to Regulation (EC) No. 715/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks in the Energy (Northern Ireland) Order 2003 to be construed as references to those Regulations as amended from time to time.

Citation and commencement

1. These Regulations may be cited as the Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2013 and shall come into operation on 12th April 2013.

(**1**) 1972 c.68
(**2**) The European Communities (Designation) Order 2010 S.I. 2010/761

PART I

AMENDMENT TO ENERGY (NORTHERN IRELAND) ORDER 2003

Amendment

2. The Energy (Northern Ireland) Order 2003(**3**) is amended as provided in this Part.

Interpretation

3. In Article 2(2)

(a) at the end of the definitions of "the Electricity Regulation" and "the Gas Regulation" in each case insert "as amended from time to time";

(b) in the definition of "exemption holder" omit the "or" at the end of sub-paragraph (e) and at the end of sub-paragraph (f) insert "or" and thereafter add

"(g) an LNG facility exemption holder;";

(c) after the definition of "licence holder" insert—

" "LNG facility exemption holder" means the person who carries on an activity referred to in Article 6(1)(d) of the Gas Order under the authority of an exemption granted pursuant to Article 7 of that Order;";

(d) after the definition of "Northern Ireland" insert—

""the SEM Order" means the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007(**4**);".

Duty on the Authority to consult and co-operate with other Authorities

4. In Article 8A for paragraph (4) substitute—

"(4) Article 9 of the SEM Order does not apply in relation to the exercise of any function of the Authority under this Article but otherwise the provisions of this Article are without prejudice to any provisions of the SEM Order.".

Exceptions from general duties

5. In Article 13 for paragraph (1A) substitute—

"(1A) Article 12 does not apply in relation to the carrying out of functions of the Department or the Authority to which Article 9 of the SEM Order applies.

(1B) For the purposes of Article 9 of the SEM Order, the interests of Northern Ireland consumers include their interests in the fulfilment by the Authority when carrying out functions to which that Article applies, of the objectives set out in Article 36(a) to (h) of the Electricity Directive.".

(**3**) S.I. 2003/419 (N.I. 6)
(**4**) S.I. 2007/913 (N.I. 7)

PART II

AMENDMENT TO ELECTRICITY (SINGLE WHOLESALE MARKET) (NORTHERN IRELAND) ORDER 2007

Amendment

6. Schedule 2 to the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 is amended as provided in this Part.

Independence of SEM Committee

7. After paragraph 1(3) insert—

"(3A) A person appointed as a member of the SEM Committee shall not—

(a) carry out any activity or have any financial or other interest that might compromise or might reasonably be seen to compromise that person's impartiality; or

(b) seek or take any instructions from any person or body that might compromise or might reasonably be seen to compromise the independence of that person as a member of the SEM Committee.".

8. In paragraph 1(5) for "Paragraphs 2, 3 and 4" substitute "Sub-paragraph (3A) and paragraphs 2, 3 and 4.".

9. For paragraph 3(1) substitute—

"(1) An appointment of a person as a member shall be for a term of not less than 5 years or for a term of not more than 7 years.

(1A) The appointment of a person as a member may only be renewed once.

(1B) To ensure continuity of the functioning of the SEM Committee, the Department shall ensure that there is a rotation of the membership of the Committee and accordingly the Department shall appoint members so that their terms of office will not all expire at the same time.".

10. For paragraph 3(4)(a)(ii) and (5)(a)(ii) substitute in each case—

"(ii) for breach of paragraph 1(3A);".

PART III

AMENDMENT TO GAS (NORTHERN IRELAND) ORDER 1996

Amendment

11. The Gas (Northern Ireland) Order 1996(**5**) is amended as provided in this Part.

Interpretation

12. In Article 3(1)—

(a) after the definition of "information" insert—

(**5**) S.I. 1996/275 (N.I. 2)

""LNG" means liquid gas, and gas which has been, or is to be, treated in an LNG facility;

"LNG facility" means a terminal which is used for the liquefication of natural gas or the importation, offloading and regasification of LNG, and includes ancillary services and temporary storage necessary for the regasification process and subsequent delivery to a gas transmission system, but does not include any part of an LNG terminal used for storage;"; and

(b) for the full stop at the end of the definition of "the Monopolies Commission" substitute ";" and thereafter insert—

""operate" in relation to an LNG facility includes the carrying out of the functions of liquefication of natural gas or the importation, offloading and regasification of LNG;".

Prohibition on operating an LNG facility

13. In Article 6(1), delete "or" at the end of sub-paragraph (b), for the comma at the end of sub-paragraph (c) substitute "; or" and thereafter insert—

"(d) operates an LNG facility,".

Exemptions from prohibition or owning an LNG facility

14. In Article 7(1), for "or (c)" substitute ", (c) or (d)".

Conditions for exemptions generally

15. After Article 7(4) insert—

"(4A) Without prejudice to the generality of paragraph (1)(c) an order under this Article shall specify such conditions as appear to the Department to be requisite or expedient to ensure that the activity authorised by the exemption is carried out in compliance with the relevant requirements and prohibitions laid down by the Directive.

(4B) If any condition to which any exemption is subject in pursuance of paragraph (4A) is not complied with by any person who carries on an activity under the authority of the exemption, the Department may give to that person a direction declaring that the exemption is revoked so far as it relates to that person to such extent and as from such date as may be specified in the direction.".

Closed distribution systems

16. After Article 7 insert—

"**Closed distribution systems**

7A.—(1) A conveyance exemption holder may apply to the Authority for any distribution system through which gas is conveyed under his exemption to be classified as a closed distribution system.

(2) Where the Authority has received an application under paragraph (1) in relation to any distribution system, it must classify that system as a closed distribution system if the Authority considers that all of the following criteria are met, that is to say—

(a) the distribution system is not used for the purpose of supplying gas to household customers, or is used to supply fewer than 50 household customers who—

(i) are employees of, or work for or otherwise render services to, the conveyance exemption holder or a person related to the conveyance exemption holder; and

(ii) take a supply of gas that is wholly or mainly from a gas production site embedded in the distribution system;

(b) the distribution system is wholly or mainly used for distributing gas within a geographically self contained industrial, commercial or shared services site and is not integrated with any pipeline system operated by the holder of a licence under Article 8(1)(a); and

(c) the distribution system is wholly or mainly used either—

(i) by system users whose businesses, for technical or safety related reasons, have operational or production premises that are integrated with those of other system users of that distribution system; or

(ii) for the purpose of supplying gas to premises owned or occupied by the conveyance exemption holder or by a person related to the conveyance exemption holder.

(3) An application under paragraph (1) must—

(a) identify the distribution system to which the application relates;

(b) include any evidence available to the applicant in support of the application; and

(c) provide any further information or documents that the Authority may request in respect of the application.

(4) The Authority must decide whether to classify a distribution system as a closed distribution system as soon as is reasonably practical after the Authority has received—

(a) the application under paragraph (1); and

(b) any further information or documents requested by it under paragraph (3)(c).

(5) The Authority must notify the person making the application under paragraph (1) of its decision as soon as is reasonably practicable after that decision has been made.

7B.—(1) Any condition specified in an order under Article 7(1)(c) in respect of a conveyance exemption which requires the approval of the Authority for the methodology of calculating a system charge in relation to a distribution system or which imposes any obligation on the holder of the exemption in relation to that approval, shall not apply in relation to any closed distribution system.

(2) Where the holder of a conveyance exemption who operates or has control of a closed distribution system receives an expression of interest from a customer who owns or occupies premises that are connected to the system, he must—

(a) inform that customer that the distribution system in question is a closed distribution system; and

(b) within 7 working days, beginning on the day on which he receives the expression of interest, by notice inform any third party supplier identified in the expression of interest that the distribution system in question is a closed distribution system.

(3) Where a customer has served an expression of interest in respect of a closed distribution system and—

(a) the customer, or a third party supplier identified in that expression of interest, serves a notice on the holder of the exemption relating to that distribution system