STATUTORY RULES OF NORTHERN IRELAND

2006 No. 358

GAS

Gas Order 1996 (Amendment) Regulations (Northern Ireland) 2006

Made - - - - *5th September 2006*

Coming into operation *1st October 2006*

The Department of Enterprise, Trade and Investment, being a Department designated for the purposes of section 2(2) of the European Communities Act 1972(**1**) in relation to measures relating to the regulation of the gas sector(**2**), in exercise of the powers conferred on it by the said section 2(2), and of every other power enabling it in that behalf, hereby makes the following Regulations:

PART I

INTRODUCTORY

Citation and commencement

1. These Regulations may be cited as the Gas Order 1996 (Amendment) Regulations (Northern Ireland) 2006 and shall come into operation on 1st October 2006.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(**3**) shall apply to these Regulations as it applies to an Act of the Assembly.

(2) In these Regulations—

"the Authority" means the Northern Ireland Authority for Energy Regulation;

"the 1996 Order" means the Gas (Northern Ireland) Order 1996(**4**);

"the Department" means the Department of Enterprise, Trade and Investment; and

"the Energy Order" means the Energy (Northern Ireland) Order 2003(**5**).

(**1**) 1972 c.68
(**2**) S.I. 2000/738
(**3**) 1954 c. 33 (N.I.)
(**4**) S.I. 1996/275 (N.I. 2)
(**5**) S.I. 2003/419 (N.I. 6)

PART II

AMENDMENTS TO THE GAS (NORTHERN IRELAND) ORDER 1996

Amendments

3. The 1996 Order shall be amended as provided in this Part.

Interpretation

4. In Article 3(1), for the definition of "the Directive" there shall be substituted the following definitions:-

"the Commission Decision" means Commission Decision PH(2005) 0791 granting a derogation from certain provisions of the Directive in respect of Northern Ireland;

"the Directive" means European Parliament and Council Directive 2003/55/EC concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC;".

Licences

5.—(1) After Article 8(4) there shall be inserted the following paragraph—

"(4A) A licence shall not be granted or extended unless the applicant therefor and, if appropriate, the construction or operation of any pipeline, facility or associated apparatus used or to be used in connection with any activity carried out under the licence meets the published criteria.".

(2) After Article 8(7) there shall be inserted the following paragraphs—

"(7A) Where the Department or the Authority refuses to grant to any applicant a licence or an extension, the Department or Authority, as the case may be, shall by notice in writing—

(a) inform the person making the application of the fact;

(b) give him the reasons for that refusal; and

(c) inform him of any right to challenge the refusal.

(7B) In paragraph (4A) "published criteria" means the criteria determined by the Department from time to time for the purposes of and in accordance with—

(a) Article 4(2) of the Directive; or

(b) in relation to the construction or operation of a direct line (within the meaning of the Directive), Article 24(2) of the Directive,

and published by it.

(7C) Paragraph (4A) shall not apply in relation to any—

(a) direct line used for a supply of gas to which Article 1 of the Commission Decision for the time being applies; or

(b) direct line, pipeline or facility used for a supply of gas to which Article 2 of the Commission Decision for the time being applies.".

Time limits for exclusive licences

6.—(1) For Article 9(1A) there shall be substituted the following paragraph—

"(1A) The period specified in a licence under paragraph (1) shall, in relation to any designated activities, expire—

(a) where the activities are designated by reference to a class or description of activities, not later than the twentieth anniversary of the commencement of any of those activities under the licence; and

(b) where the activities are designated by reference to an area, not later than the twentieth anniversary of the first supply of gas to customers in the area.".

(2) In Article 9(3) for the words "Subject to Article 9A, where a licence" there shall be substituted the words "Subject to Article 9A, where a licence".

(3) For Article 9(7) and (7A) there shall be substituted the following paragraphs—

"(7) The grantor may, with the consent of the holder of a licence conferring exclusive authority to carry on designated activities, modify the licence—

(a) so as to substitute for the specified period such longer period as the grantor may determine;

(b) so as to add to those activities which are designated activities for the purposes of this Article such other activities as the grantor may determine.

(7A) The grantor may not under paragraph (7)(a) substitute a longer period than that allowed under paragraph (1A) unless the grantor is satisfied that it is necessary or expedient to do so in the interests of the efficient operation of the designated activities.".

Limitation of rights under exclusive licences

7. For Article 9A there shall be substituted the following Article—

"**Limitation of rights under exclusive licences**

9A. The prohibition in Article 9(3) shall not apply to the grant by the Department or the Authority of a licence under Article 8(1)(c) authorising the holder to supply a customer—

(a) who is described in Article 24(1) of the Directive and in respect of whom the derogation in relation to that Article under the Commission Decision does not apply; and

(b) where the gas is supplied and conveyed through a direct line.".

Compliance with Community obligations

8. For Article 10A there shall be substituted the following Article—

"**Compliance with Community obligations**

10A.—(1) Without prejudice to the generality of Article 10(1), a licence shall include such conditions as appear to the grantor to be necessary or expedient having regard to the requirements and prohibitions laid down in the Directive.

(2) The conditions included in a licence in accordance with paragraph (1) shall, in particular—

(a) ensure that the licence holder and, if appropriate, any activity authorised by the licence and the construction or operation of any pipeline, 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 the technical safety criteria and rules required by Article 6 of the Directive;

(c) require the licence holder to keep accounts in accordance with the requirements of Article 17 of the Directive and to have them audited in accordance with those requirements and shall 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.

(3) The conditions included in a licence in accordance with paragraph (1) shall, in particular, in the case of a licence under Article 8(1)(a) ensure that the holder does not disclose or abuse information contrary to Article 10 or 14 of the Directive and shall, having regard to the activities authorised by the licence, require the holder—

(a) where he balances gas inputs to and offtakes from any pipeline used under the licence, to adopt and follow rules which comply with the relevant requirements of Articles 8(2) and 12(5) of the Directive;

(b) to comply with the requirements of Article 8(4) of the Directive in procuring the energy used in the carrying out of his functions;

(c) where appropriate to carry out the tasks laid down for him by Article 12(1) of the Directive;

(d) to refrain from discriminating between persons using or intending to use any pipeline, facility or associated apparatus operated for the purposes of the licence, contrary to Article 12(2) of the Directive;

(e) to provide such persons with the information required by Article 12(4) of the Directive;

(f) to provide any other licence holder mentioned in Article 12(3) of the Directive with the information required by that provision; and

(g) to comply with the requirements for system access laid down by Article 18 of the Directive (as read with Article 2 of the Commission Decision).

(4) The conditions included in a licence in accordance with paragraph (1) shall, in particular, in the case of a licence under article 8(1)(a) provide for the Authority to approve in advance of their coming into operation any terms and conditions—

(a) for the connection and access to any pipeline, facility or associated apparatus operated by the holder for the purposes of the licence including but not limited to the tariffs, or the method for determining the tariffs, for such connection or access; and

(b) for the provision of any balancing services.

(5) The conditions included in a licence in accordance with paragraph (1) shall, in particular, in the case of a licence under Article 8(1)(a) granted to a person forming part of a vertically integrated undertaking (within the meaning of the Directive)—

(a) to whom Article 9(1) of the Directive applies, require that person to comply with the requirements referred to that provision for independence in terms of his legal form, organisation and decision making in relation to his activities under the licence and, in particular, to comply with the minimum criteria laid down by Article 9(2) of the Directive;

(b) to whom Article 13(1) of the Directive applies, require that person to continue to comply with the requirements referred to in that provision for independence in terms of his legal form, organisation and decision making in relation to his activities under the licence and to comply with the requirements laid down by Article 13(2) of the Directive for independence in terms of its organisation and decision making, in particular the minimum criteria laid down thereby; and

(c) who carries on the combination of activities to which Article 15 of the Directive applies require that person to comply with the requirements laid down by that provision for independence in terms of its legal form, organisation and decision making and meet the requirement of points (a) to (d) of that Article.

(6) The conditions included in a licence in accordance with paragraph (1) shall, in particular, in the case of a licence under Article 8(1)(a) or (b), as appropriate having regard to the activities authorised by the licence, require the holder—

(a) to carry out the tasks laid down for him by Article 8(1) of the Directive;

(b) to comply with the requirements for access to storage laid down by Article 19 of the Directive.

(7) The conditions included in a licence in accordance with paragraph (1) shall, in particular, in the case of a licence under Article 8(1)(c)—

(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 pipeline system;

(b) ensure that consumers of gas have access to the information (including information about the contractual terms and conditions offered to such consumers) required by Article 3(3) of the Directive;

(c) ensure that any person who is an eligible customer for the purposes of Article 23 of the Directive (as read with Article 2 of the Commission Decision) can exercise his freedom to purchase gas from the supplier of his choice within the meaning of that Article;

(d) ensure that persons exercising that freedom are not charged therefor and are able to use for the purpose procedures which comply with item (f) of Annex A to the Directive; and

(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 such a licence are sufficiently transparent to enable the consumer to exercise that freedom.".

Dispute resolution

9. After Article 27 there shall be inserted—

"**Dispute resolution**

27A.—(1) Any person having a complaint (hereinafter referred to as "a complaint") in relation to any decision, act or failure to act by a licence holder in relation to any matter falling within Article 25(1) to (4) of the Directive may make it under this Article.

(2) A complaint shall be made in writing to the Authority and shall be accompanied by such information as is necessary or expedient to allow the Authority to make a determination in relation to the complaint.

(3) The Authority shall establish and publish such procedures as it thinks appropriate for the determination by it of a complaint.

(4) The procedures established under paragraph (3) shall provide for the determination of the complaint to be notified to the complainant within the requisite period or such longer period as the Authority may agree with the complainant.

(5) For the purposes of paragraph (4) the requisite period in any case means—