

# **CRITERIA FOR GAS LICENCE APPLICATIONS AND APPLICATIONS FOR CONSENT TO CONSTRUCT MAJOR PIPELINES OR GAS STORAGE FACILITIES**

## **1 INTRODUCTION AND PURPOSE**

- 1.1 This document explains the regulatory and legal framework within which the Northern Ireland Authority for Utility Regulation (the “Authority”) and the Department of Enterprise Trade and Investment (the “Department”) currently consider applications for licences (or extensions to existing licences) authorising the conveyance (transmission or distribution), storage or supply of natural gas. In particular it sets out the objective and non-discriminatory criteria for deciding whether to grant a licence or an extension to a licence and also the procedures that will be followed when an application for a licence or an extension is proposed to be refused.

Any application for a licence or extension to an existing licence should be sent to the Authority. Upon receipt of the application, the Authority will advise the Department of your application.

This document also sets out the criteria which the Authority will consider when deciding whether to grant an authorisation for the construction of a major gas pipeline or gas storage facility.

- 1.2 This document should be read in conjunction with the following:

- The Gas (Applications for Licences and Extensions) Regulations (Northern Ireland) 1996 (the “Regulations”), a copy of which is included in Appendix 1.
- The Gas (Northern Ireland) Order 1996 (the “Gas Order”) and the Energy (Northern Ireland) Order 2003 (the “Energy Order”), each as amended by the Gas Order 1996 (Amendment) Regulations (Northern Ireland) 2006 (the “Amendment Regulations”).
- The Planning (Northern Ireland) Order 1991 (the “Planning Order”) and the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999 (the “Planning Regulations”).
- The Pipelines Safety Regulations (Northern Ireland) 1997 (the “Pipelines Safety Regulations”) and the Gas Safety (Management) Regulations (Northern Ireland) 1997 (the “Gas Safety Regulations”).

Copies of the Gas Order, the Energy Order, the Amendment Regulations, the Planning Order, the Planning Regulations, the Pipelines Safety Regulations and the Gas Safety Regulations are available from the Office of Public Sector Information (OPSI) and online at <http://www.opsi.gov.uk>

- The standard conditions for gas supply licences and the standard conditions for gas conveyance licences (together the “Standard Licence Conditions”) are available on the Authority’s web site (<http://ofreg.nics.gov.uk>) or can be obtained from the Authority at Queens House, 14 Queen Street, Belfast, BT1 6ER.
- 1.3 The system for licensing gas undertakings in Northern Ireland authorises market participants to carry out the following activities:
- gas conveyance (transmission and distribution);
  - gas storage; and
  - gas supply.
- 1.4 This document sets out the minimum criteria that have to be met by an applicant for a licence to participate in these activities, or by an existing licensee seeking an extension of its licence. It also sets out the minimum criteria that have to be met by an applicant for consent for the construction of a major gas pipeline or gas storage facility. Such criteria take into account the Licensing Body’s principal objective in relation to the promotion of the development and maintenance of an efficient, economic and co-ordinated gas industry in Northern Ireland, its statutory duties and the requirements of EU law including Directive 2003/55/EC concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC (the “Gas Directive”). The criteria do not set out prescriptive standards that must be met, but indicate to applicants the nature of the information that the Licensing Body will require and how it will assess that information.
- 1.5 The rest of this document is structured as follows:
- Section 2 sets out the regulatory and legal framework for the licensing of gas activities in Northern Ireland;
  - Section 3 sets out the objective and non-discriminatory criteria applicable to all licence applications and applications for the extension of a licence;
  - Section 4 sets out the specific objective and non-discriminatory criteria for each of the licensed activities;
  - Section 5 sets out the procedure that the Licensing Body will follow if it proposes to refuse to grant a licence, or extension to a licence;
  - Section 6 sets out the objective and non-discriminatory criteria against which applications for consent for the construction of major gas pipelines or gas storage facilities will be assessed by the Authority; and
  - Section 7 sets out the procedure that the Authority will follow if it proposes to refuse to grant consent for the construction of a major gas pipeline or gas storage facility.

- 1.6 If you have any queries about this document, then please contact Eimear Smyth at the Authority by telephone on 028 90311575 or by email at [eimear.smyth@niaur.gov.uk](mailto:eimear.smyth@niaur.gov.uk), or John Boyd at the Department by telephone on 028 90529317 or by email at [john.boyd@detini.gov.uk](mailto:john.boyd@detini.gov.uk)

## **2 THE REGULATORY FRAMEWORK**

This section explains the regulatory and legal framework relating to the licensing of gas activities in Northern Ireland. In this context, “gas activities” relates only to gas supplied, or intended to be supplied, through pipes.<sup>1</sup>

### **2.1 The regulatory framework**

The principal objective and general duties of the Department and the Authority in relation to gas are set out at Article 14 of the Energy Order and Article 5 of the Gas Order, as amended by the Amendment Regulations. The principal objective of both the Department and the Authority in carrying out their respective gas functions is to promote the development and maintenance of an efficient, economic and co-ordinated gas industry in Northern Ireland.

Each of them is required to carry out those functions in the manner which it considers best calculated to further the principal objective having regard to (amongst other things) the need to:

- (a) ensure a high level of protection of the interests of consumers of gas;
- (b) secure that licence holders are able to finance the activities which are the subject of obligations imposed under the Gas Order or the Energy Order;
- (c) secure that prices charged in connection with the conveyance of gas are in accordance with a common tariff which does not distinguish between different parts of Northern Ireland or the extent of use of any pipeline; and
- (d) protect the interests of licence holders in respect of the prices at which, and the other terms on which, any services are provided by one gas licence holder to another.

In performing their duty, the Department and the Authority must have regard to the interests of:

- (a) individuals who are disabled or chronically sick;
- (b) individuals of pensionable age; and
- (c) individuals with low incomes.

The Department and the Authority may also, in carrying out any gas functions, have regard to the interests of consumers in relation to electricity.

The Department and the Authority are also required to carry out their gas functions in the manner which they consider is best calculated to:

- (a) promote the efficient use of gas;

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<sup>1</sup> The Gas (Northern Ireland) Order 1996 Article 3(3)

- (b) protect the public from danger relating to gas;
- (c) secure a diverse, viable and environmentally sustainable<sup>2</sup> long-term energy supply; and
- (d) facilitate competition.

The Department and the Authority must not discriminate between applicants regarding either rights or obligations. They must also have regard, in carrying out their gas functions, to the effect on the environment of gas activities<sup>3</sup>.

## 2.2 The legal framework

### The Gas Order

The Gas Order makes it an offence to carry out certain activities unless licensed or exempt from the requirement for a licence<sup>4</sup>.

The Department after consultation with the Authority, or the Authority with the consent of the Department (or under a general authority from the Department), can grant licences authorising the following activities:

- gas conveyance (the transportation and/or distribution of gas from one place to another (including through any part of an interconnector situated in Northern Ireland)).
- gas supply (to specified persons or premises).
- gas storage (in specified gas storage facilities)<sup>5</sup>.

The Department after consultation with the Authority, or the Authority with the consent of the Department (or under a general authority from the Department), may:

- extend a licence by increasing the area authorised by the licence; or
- extend a storage licence by adding to the specified gas storage facilities; or
- extend a supply licence by adding to the specified persons or premises<sup>6</sup>.

Before granting a licence or an extension to an existing licence the Licensing Body must publish a notice stating the reasons why it proposes to grant the licence and giving the time within which representations must be made (not less than 28 days from the date of publication of the notice). The Licensing Body must consider any representations that are made and not withdrawn<sup>7</sup>.

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<sup>2</sup> Environmental sustainability includes the need to guard against climate change - The Gas (Northern Ireland) Order 1996 Article 14(7)

<sup>3</sup> The Energy (Northern Ireland) Order 2003 Article 14

<sup>4</sup> The Gas (Northern Ireland) Order 1996 Article 6

<sup>5</sup> The Gas (Northern Ireland) Order 1996 Article 8(1)

<sup>6</sup> The Gas (Northern Ireland) Order 1996 Article 8(2)

<sup>7</sup> The Gas (Northern Ireland) Order 1996 Article 8(3) and Article 8(4)

The criteria set out in this document also apply in relation to a proposed transferee when the Licensing Body is considering whether or not to give consent to the assignment of an existing licence.

### The Gas Directive (2003/55 EC)

The Gas Directive places certain obligations on the Department and the Authority who are responsible for authorisation or approval for the construction or operation of natural gas facilities, or for the transmission, distribution, supply and storage of natural gas. The Gas Directive was transposed in Northern Ireland by the Amendment Regulations which came into operation on 1st October 2006.

- Those obligations include laying down objective and non-discriminatory criteria to be met by an applicant for a gas licence;
- making such criteria, and details of the application procedure, available to the public;
- ensuring that the reasons for any refusal to grant a licence are objective and non-discriminatory and are given to the applicant, and that a procedure is established to enable an applicant to appeal against such refusal; and
- informing the Commission of the reasons why a licence application has been refused<sup>8</sup>.

### The Regulations

The Regulations set out the manner and the form in which an application for a gas licence or an extension to an existing licence should be made and the information that an application must contain so that the Licensing Body can consider the application.

The Regulations also specify the fee payable with an application for each type of licence.

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<sup>8</sup> Directive 2003/55/EC of the European Parliament and of the Council – 26 June 2003 Article 4; The Gas (Northern Ireland) Order 1996 Article 8(4A), Article 8(7B) and Article 8(7C)

### **3 OBJECTIVE AND NON-DISCRIMINATORY CRITERIA APPLICABLE TO ALL LICENCE APPLICATIONS**

This Section describes the general criteria that the Licensing Body will use when assessing an application for a gas licence, or for the extension of a gas licence. In addition to the general criteria set out in this section, applicants must also satisfy the criteria applicable to their specific licence activities, which are set out in Section 4. Applicants should in any event ensure that they have systems and procedures in place that will enable them to comply with all the conditions of the licence if it is granted. Failure to comply with a condition of a licence may result in formal enforcement action.

#### **3.1 Provision of information**

In order to be able to assess applications efficiently, other than in exceptional circumstances (such as an urgent request for a temporary licence), the Licensing Body will not start its assessment process until all of the information required by the Regulations has been provided.

In cases where the applicant has provided insufficient information, the Licensing Body will request additional information. In those circumstances, in particular where an applicant takes a considerable time to respond to requests for further information, there may be a delay in processing an application. Where necessary the Licensing Body will agree timescales for the applicant to provide the additional information. Failure to meet those agreed timescales may lead to a refusal to grant a licence.

The Gas Order makes it an offence for any person, in giving any information or making an application, to make any statement which is known to be false in a material particular, or to recklessly make any statement which is false in a material particular.

#### **3.2 Compliance with licence conditions**

Applicants should be able to demonstrate that they will be able to comply with all of the conditions of their licence including those imposing technical, safety or system security requirements. The Licensing Body will consider all documents and other particulars required under Schedule 2 of the Regulations, including, where applicable:

- proof that the applicant could finance the proposed project for which the licence application is being made (for conveyance licences).
- a development plan, including the economic rate of return, and (for gas conveyance licences) details of any proposed authorised area and pipeline system; (for gas storage licences) the proposed location of a gas storage facility; or (for gas supply licences) a description of the consumers to be supplied;
- details and justification for any exclusive authority to convey/supply gas that is being sought;
- details and justification for any modification to the Standard Licence Conditions;

- particulars of any proposed system security standards, and any document required to demonstrate that security and continuity of supply will be ensured for customers; and
- details of how the applicant will comply with the relevant sales and marketing codes in Northern Ireland and the voluntary marketing code developed by the Consumer Council Northern Ireland

### 3.3 Previous applications

The Licensing Body will check to establish:

- whether the applicant has previously held a licence that has been revoked, and
- whether a previous licence application from the applicant has been refused.

In each case the reason for the revocation or refusal may be considered to see if it is relevant to the decision to grant or extend a licence.

### 3.4 Solvency

Before granting or extending a licence, the Licensing Body will carry out appropriate checks as to whether that the applicant is solvent.

### 3.5 Disqualified directors

The Licensing Body may check to establish whether the directors (including shadow directors) of the applicant are disqualified.

### 3.6 Standard Licence Conditions

All applicants must be able to demonstrate their ability to comply with the relevant Standard Licence Conditions.

The Licensing Body may only modify the Standard Licence Conditions to such extent as it considers necessary to meet the circumstances of the particular case, so any application will need to state clearly the reasons why any modifications are required.

### 3.7 Exclusive licences

Subject to the requirements of the Gas Directive, the Licensing Body has the ability to confer on a licensee an exclusive authorisation to carry on certain designated activities for a specified period.<sup>9</sup>

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<sup>9</sup> The Gas (Northern Ireland) Order 1996 Article 9(1)

Where such an exclusive authorisation has been granted no other licence shall be granted so as to authorise any other person to carry on such designated activities within the specified period.<sup>10</sup> Please note that the Licensing Body is only able to grant exclusivity for up to twenty years.<sup>11</sup>

The Licensing Body will only grant (or extend<sup>12</sup>) such an exclusive authorisation in circumstances where it considers that it is necessary or expedient to do so in line with regard to the duties imposed by Article 14 of the Energy Order 2003.

Where two competing applications, for the same or overlapping exclusive authorisation in the same or overlapping areas, are submitted the Licensing Body may grant a maximum of one licence containing such exclusive authorisation in any given area. When choosing between two such competing applications the Licensing Body will consider:

- (a) the objective and non-discriminatory criteria published in this document; and
- (b) its principal objective and considerations set out in Section 2.1.

### 3.8 Representations

Where the Licensing Body receives representations about a proposal to grant, or extend, a licence in response to the consultation referred to in paragraph 2.2, it will consider whether they are relevant to the criteria used to assess the application and/or the Licensing Body's principal obligation and general duties. If necessary, the application will be reassessed in the light of these representations.

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<sup>10</sup> The Gas (Northern Ireland) Order 1996 Article 9(3)

<sup>11</sup> The Gas (Northern Ireland) Order 1996 Article 9(1A)

<sup>12</sup> The Gas (Northern Ireland) Order 1996 Article 9(7)

#### **4 SPECIFIC OBJECTIVE AND NON-DISCRIMINATORY CRITERIA FOR EACH OF THE LICENSED ACTIVITIES**

In addition to demonstrating compliance with the general criteria (section 3.6), applicants will also need to demonstrate compliance with criteria that are specific to the different licensable activities.

##### **4.1 Conveyance licence applications**

The Licensing Body will seek confirmation from the applicant that it has initiated discussions for a gas safety case with the Health and Safety Executive for Northern Ireland and will take advice from the HSE regarding the applicant's ability to comply with the gas safety case.

4.2 The Licensing Body will not issue any gas conveyance licence, or extend such a licence, unless it is satisfied that the applicant is aware that they must comply with the:

- Planning (Northern Ireland) Order 1991
- The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999
- Pipelines Safety Regulations (Northern Ireland) 1997
- Gas Safety (Management) Regulations (Northern Ireland) 1997

4.3 An applicant must provide information about how it will comply with the following Standard Licence Conditions:

- Condition 1.6            The applicant's proposed arrangements for powers of entry.
- Condition 1.7            The applicant's proposals as regards the authorisation of persons to exercise any powers of entry.
- Condition 2.7            The applicant's proposals to operate an emergency call-out service.
- Condition 2.8            The applicant's proposals to meet its obligations to achieve the Standards of Performance.

##### **4.4 Transmission licence**

To comply with article 9 of the EU Directive 2003/55, the Licensing Body will not issue a conveyance licence for the transportation of natural gas to any applicant (or any subsidiary of the applicant) which also holds a supply licence.

#### 4.5 Distribution licence

In accordance with article 13 of the EU Directive 2003/55, the Licensing Body will not issue a licence for the distribution of natural gas to an applicant which already holds a supply licence unless the total number of customers supplied by the applicant is fewer than 100,000.

#### 4.6 Replacement conveyance (Transmission and Distribution) licences

Under certain circumstances which are set out in the Standard Licence Conditions, the Licensing Body may revoke a gas conveyance licence. In such circumstances, it is essential to ensure that steps are taken to ensure the safety, integrity and continued operation of the network. Therefore, the Licensing Body will consider an application by any other suitable person (having regard to the availability of financial resources and technical expertise of the applicant) for a licence in respect of the activities authorised under the licence which has been or will be revoked.

In these circumstances the Licensing Body may grant a “Replacement Conveyance Licence” if an application is made under Article 8(1)(a) of the Gas Order containing the information prescribed by the Regulations.

#### 4.7 Storage licence applications

At present there are no Standard Licence Conditions in connection with gas storage. As and when these are developed, they will be published on the Authority’s website, and this document will be updated to reflect their requirements.

The Licensing Body will liaise with the Health Safety Executive for Northern Ireland and the planning authorities for Northern Ireland.

The Licensing Body must be satisfied that the appropriate planning permission is likely to be given for the proposed location of the gas storage facility and that the applicant can comply with the necessary arrangements.

#### 4.8 Supply licence applications

Supply licences may be granted in respect of a particular area, a particular class of customers, or individual customers, and the applicant should provide particulars to identify the particular area, customers, or class of customers it proposes to supply.

Supply licence applicants must provide particulars of the sources from which the gas will be supplied and particulars of the arrangements made for the conveyance of that gas. This should include the arrangements for ensuring security and continuity of supply for customers.

The Licensing Body will assess an applicant's ability to comply with all licence conditions (section 3.6). However, where an applicant has applied for a licence to supply domestic customers, the Licensing Body will, in addition, pay particular attention to the applicant's ability to comply with the social obligations listed in the licence.<sup>13</sup>

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<sup>13</sup> Section 2.9 of the Standard Supply Licence conditions.

## **5 PROCEDURE ON REFUSAL TO GRANT A LICENCE**

5.1 The Licensing Body may refuse to grant a licence or the Department may refuse to give its consent for the granting by the Authority of a licence where:

- it would be contrary to the Licensing Body's duties to issue such a licence;
- there is already a licence in place (or there is a proposed licence) in the same or overlapping area which includes the exclusive rights for the same activity for which the applicant is seeking a licence;
- the information supplied does not satisfy one or more of the criteria outlined in this document;
- the Licensing Body is of the opinion that the information supplied by the applicant is false or misleading; or
- the applicant has failed to provide, when requested, additional information within the required time.

### 5.2 Notification of refusal to grant a licence

Where the Licensing Body proposes to refuse an application the reasons will be given to the applicant in a notice.

The notice will.

- (a) state that the Licensing Body proposes to refuse the application;
- (b) state the reasons why the Licensing Body proposes to refuse the application;
- (c) explain any further information which may be needed; and
- (d) specify a time of not less than 28 days within which the applicant may make representations about why it disagrees with the Licensing Body's decision to refuse the application and to provide further information if required.

5.3 The Licensing Body will consider all representations which are duly made and not withdrawn.

Where the representations were unsuccessful, the Licensing Body shall notify the applicant of the final decision to refuse the application restating the reasons.

Where unsuccessful representations were made, the notice shall state the reasons for the refusal and the reasons why the representations were unsuccessful.

5.4 The Licensing Body will notify the European Commission of each refusal to grant a licence, together with the reasons for the refusal and details of any unsuccessful representations.

## **6 APPLICATIONS FOR CONSENT FOR THE CONSTRUCTION OF MAJOR GAS PIPELINES OR GAS STORAGE FACILITIES**

### **6.1 Consent for construction of a major gas pipeline**

Any person who executes works for the construction of a major gas pipe-line<sup>14</sup> without the consent of the Authority or otherwise in accordance with the consent of the authority is guilty of an offence.<sup>15</sup>

Consent will only be given to applicants;

- who hold gas conveyance licences authorising the transportation of gas in the area for which the application has been sought; or
- who are the agents of gas conveyance licence holders who are authorised to transport gas in the area for which the application has been sought; or
- who have entered into an agreement (approved by the Authority) with a gas conveyance licence holder who holds a licence in the area for which the consent has been sought, for the operation of the proposed pipeline; and
- who comply with the requirements outlined in Article 35(4) of the Gas Order and in the Gas (Applications for licences and Extensions) Regulations (Northern Ireland) 1996 and Article 10 of the Amendment Regulations;
- who show how the proposed construction fits into any development plan which is linked to a conveyance licence.
- confirm that they have initiated discussions for a gas safety case with the Health and Safety Executive for Northern Ireland.

6.2 The Licensing Body will not issue any gas conveyance licence, or extend such a licence, unless it is satisfied that the applicant is aware that they must comply with the:

- Planning (Northern Ireland) Order 1991
- The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999
- Pipelines Safety Regulations (Northern Ireland) 1997
- Gas Safety (Management) Regulations (Northern Ireland) 1997

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<sup>14</sup> A pipeline which will exceed 7km in length, and will have a design operating pressure exceeding 7 bar gauge – The Gas (Northern Ireland) Order 1996 Article 35

<sup>15</sup> Gas (Northern Ireland) Order 1996 Article 35 & 36

6.3 Applications will be assessed based on the requested information and evidence provided (section 3.6) Consent will only be given to proposals that are capable of fulfilling all requirements imposed under the relevant gas conveyance licence.

The Licensing Body will not grant a direction for the modification of a pipeline unless the modification meets the criteria outlined in this section 6.1.

6.4 Consent for construction of a major gas storage facility

At present there are no Standard Licence Conditions in connection with gas storage. As and when these are developed, they will be published on the Authority's website, and this document will be updated to reflect their requirements.

Any person who executes works for the construction of a gas storage facility without the consent of the Authority or otherwise than in accordance with the consent of the Authority is guilty of an offence.<sup>16</sup>

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<sup>16</sup> Gas (Northern Ireland) Order 1996 Article 37

**7 PROCEDURE ON REFUSAL TO GRANT CONSENT FOR THE CONSTRUCTION OF A MAJOR PIPELINE OR STORAGE FACILITY**

7.1 The Authority may propose to refuse to grant consent for the construction of a major gas pipeline or gas storage facility (or to grant a direction for the modification of a major gas pipeline or increase in capacity of a gas storage facility) where:

- (a) it would be contrary to the Authority's duties to grant such consent (or direction);
- (b) the information supplied does not satisfy one or more of the criteria outlined in this document;
- (c) the Authority is of the opinion that the information supplied is false or misleading; and
- (d) the applicant has failed to provide, when requested, additional information within the required time.

7.2 Notification of refusal to grant consent

Where the Authority proposes to refuse to grant a consent (or direction) the reasons will be given to the applicant in a notice.

The notice will:

- (a) state that the Authority proposes to refuse a consent (or direction);
- (b) state the reasons why the Authority proposes to refuse a consent (or direction);
- (c) explain any further information which may be needed; and
- (d) specify a time of not less than 28 days within which the applicant may make representations about why it disagrees with the Authorities decision to refuse a consent (or direction) and to provide further information if required.

7.3 The Authority will consider all representations which are duly made and not withdrawn.

Where no representations or further information is received within the specified period, or where the representations were unsuccessful, the Authority shall notify the applicant of its final decision to refuse the application restating the reasons.

Where unsuccessful representations were made, the notice shall state the reasons for the refusal.

7.4 The Authority will notify the European Commission of each refusal to grant a consent (or direction), together with the reasons for the refusal and details of any unsuccessful representations.

**APPENDIX 1**

The Gas (Applications For Licences and Extensions)  
Regulations (Northern Ireland) 1996