

Title: Gas (Internal Market) Regulations (NI) 2020 and associated Gas (Amendment) (EU Exit) Regulations (NI) 2020	Regulatory Impact Assessment (RIA)
	Date: 10 November 2020
	Type of measure: Secondary Legislation
Lead department or agency: Department for the Economy (DfE)	Stage: Final
	Source of intervention: Domestic
Other departments or agencies: N/A	Contact details: Fred Frazer DfE Gas Policy Branch E-mail: fred.frazer@economy-ni.gov.uk

Summary Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

The Gas (Internal Markets) Regulations (NI) 2020 will amend 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/EC ('the 2019 Gas Directive Amendment') into NI legislation. DfE has an obligation to ensure that EU Directives are implemented in full in NI. Failure to fully implement the Gas Directive and Gas Directive Amendment could result in infraction proceedings and substantial fines.

What are the policy objectives and the intended effects?

In order to comply with the requirements of the 2009 Gas Directive, as amended by the 2019 Gas Directive Amendment, DfE would propose to make some minor amendments to the Gas (NI) Order 1996, the Energy (NI) Order 2003 and the Energy Act 2008. The changes will ensure that appropriate arrangements are in place for regulating gas transmission pipelines which connect NI with a country outside the EU, and for arranging third party access to a gas storage facility sited in the territorial seas adjacent to NI. No such infrastructure currently exists in NI, or is planned, so these legislative changes are anticipated to have no immediate practical impact other than ensuring compliance with an EU Directive. The Gas (Internal Markets) Regulations (NI) 2020 and the associated Gas (Amendment) (EU Exit) Regulations (NI) 2020 will also make a number of necessary consequential amendments to NI energy legislation to ensure that the legislation continues to operate effectively from the end of the transition period following the UK's exit from the EU.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The main alternative to introducing these Regulations is to do nothing. However, if NI fails to fully implement the requirements of the Gas Directive Amendment, the European Commission could progress infraction proceedings against the UK which could result in substantial fines which would have to be met by the NI Block. This option has therefore not been chosen.

<p>Will the policy be reviewed? The Regulations will include a number of necessary consequential amendments to NI energy legislation effective from the end of the transition period (31 December 2020) following the UK's exit from the EU.</p>	<p>If applicable, set review date:</p>
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Cost of Preferred (or more likely) Option		
Total outlay cost for business £m	Total net cost to business per year £m	Annual cost for implementation by Regulator £m
<p>Nil at present</p>	<p>Nil at present</p>	<p>Nil at present</p>

<p>Does Implementation go beyond minimum EU requirements?</p>	<p>YES <input type="checkbox"/></p>	<p>NO <input checked="" type="checkbox"/></p>
<p>Is this measure likely to impact on trade and investment?</p>	<p>YES <input type="checkbox"/></p>	<p>NO <input checked="" type="checkbox"/></p>
<p>Are any of these organisations in scope?</p>	<p>Micro Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>	<p>Small Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>
	<p>Medium Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>	<p>Large Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>

The final RIA supporting legislation must be attached to the Explanatory Memorandum and published with it.

Approved by: [Diane Dodds] Date: 20 November 2020

ECONOMIC ASSESSMENT (Preferred Option)

Costs (£m)	Total Transitional (Policy) (constant price)	Years	Average Annual (recurring) (excl. transitional) (constant price)	Total Cost (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate	Nil at present		Nil at present	Nil at present
Description and scale of key monetised costs by 'main affected groups'				
<p>As NI does not have any gas transmission pipelines with a third country, or gas storage facilities in the adjacent territorial seas, and there are currently no plans for such infrastructure, it is not anticipated that implementation of the Regulations will have any immediate practical consequences.</p>				
Other key non-monetised costs by 'main affected groups'				
As above				
Benefits (£m)	Total Transitional (Policy) (constant price)	Years	Average Annual (recurring) (excl. transitional) (constant price)	Total Benefit (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate				
Description and scale of key monetised benefits by 'main affected groups'				
<p>Implementation of the Regulations will ensure NI's compliance with the 2009 Gas Directive and 2019 Gas Directive Amendment and avoid potential EU infraction proceedings and substantial fines which would have to be paid out of the NI block.</p>				
Other key non-monetised benefits by 'main affected groups'				
<p>NI does not currently have any gas infrastructure which would be impacted by the Regulations. They will, however, provide clarity for owners/operators and potential users on regulatory arrangements for any potential future gas infrastructure falling within these categories.</p>				
Key Assumptions, Sensitivities, Risks				
<p>The Department has been advised of receipt by the UK of a non-notification infraction decision Article 258 Notice from the European Commission in relation to transposition of Gas Directive Amendment 2019/692/EC. There is therefore a high risk of infraction proceedings and substantial fines if NI does not implement the Regulations.</p>				

BUSINESS ASSESSMENT (Preferred Option)

Direct Impact on business (Equivalent Annual) £m				
Costs: Nil	Benefits: Nil	Net: Nil		

Cross Border Issues (Preferred Option)

How does this option compare to other UK regions and to other EU Member States (particularly Republic of Ireland)

The Regulations aim to transpose 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 for the Economy (**‘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 as part of this process.

EVIDENCE BASE

Problem under consideration:

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 EU 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.

In 2019, the Gas Directive Amendment (2019/692) amended some aspects of the Gas Directive (2009/73/EC) 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 (**“a third country”**) outside the European Union.

There are currently no existing or planned gas pipe-lines connecting Northern Ireland with a third country but the proposed Regulations will make some minor changes to:

- The Gas (NI) Order 1996;
- The Energy (NI) Order 2003; and
- The Energy Act 2008

to ensure that NI energy legislation is compliant with the EU Gas Directive's requirements.

The Regulations will also take the opportunity close an inadvertent legislative gap and provide clarity on arrangements for organising third party access to a gas storage facility sited in the territorial seas adjacent to Northern Ireland in compliance with Gas Directive requirements for access to storage. As there is no such existing or planned gas infrastructure in Northern Ireland in respect of pipe-lines connecting with third countries or a gas storage facility in the NI territorial sea, it is not anticipated that these legislative amendments will have any immediate practical implications. There is existing legislative provision in the Gas (NI) Order 1996 for regulating a gas storage facility sited within Northern Ireland, including in its internal waters so these Regulations would not impact up on the existing gas storage proposals at Islandmagee.

In addition and following on from the above legislative measures, the Regulations will make a number of necessary consequential amendments to NI energy legislation to ensure that it continues to operate effectively from the end of the transition period at 31 December 2020 following the UK's exit from the EU. A number of consequential amendments are necessary

following transposition of the Gas Directive Amendment in order to, for example, remove 'inoperabilities' from the Gas Order and Energy Order from 31 December 2020. These include provisions for reporting to the European Commission, liaising with the Agency for the Cooperation of Energy Regulators ('ACER'), and consulting with the relevant authorities in other Member States regarding gas issues. Such provisions are being added to our legislation to ensure compliance with the Gas Directive Amendment and avoid infraction fines, but will no longer be appropriate following the end of the transition period.

Rationale for intervention:

Failure to fully implement the Gas Directive and Gas Directive Amendment could result in infraction proceedings and substantial fines which would have to be paid out of the NI block.

Policy objective:

Compliance with the requirements of the 2009 Gas Directive as amended by the 2019 Gas Directive Amendment.

Description of options considered (including do nothing), with reference to the evidence base to support the option selection;

- **Option 1 - Do nothing** – If NI fails to implement fully the Gas Directive Amendment, the European Commission could progress with infraction proceedings against the United Kingdom which could result in substantial fines which would have to be met by the NI Block. This option was therefore not considered.
- **Option 2 - Introduce the proposed legislative amendments** – Implementing the Regulations will contribute towards NI achieving compliance with the requirements of the Gas Directive as amended by the Gas Directive Amendment and will therefore help NI to avoid substantial fines. This option is therefore carried forward.

Costs and benefits:

Implementing the Regulations will help NI to avoid substantial fines which could potentially be imposed by the European Commission up to four years following the UK's exit from the EU for any identified instances of non-compliance with the Gas Directive Amendment during the period up to 31 December 2020.

As NI does not have any gas transmission pipelines with a third country or gas storage facilities in the adjacent territorial seas and there are currently no plans for such infrastructure, it is not anticipated that implementation of the Regulations will have any immediate practical consequences for local business. They will, however, provide clarity for owners/operators and potential users on regulatory arrangements for any future gas infrastructure falling within these categories.

They will, for example, provide a basis for agreeing terms and conditions for third party access to any 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 the Northern Ireland Authority for Utility Regulation ('the Utility Regulator') for direction. These arrangements are already in place for any gas storage facility sited elsewhere in Northern Ireland, including in NI internal waters, or in Great Britain. It is not expected that closing the legislative gap in respect of gas storage facilities sited in the NI territorial sea will create additional costs for business over and above those already applicable to a gas storage facility elsewhere in the UK. Bringing the NI territorial sea within the Utility Regulator's jurisdiction in respect of granting a

gas storage licence, however, could lead to some additional administrative costs for the Regulator should a project within this area come forward in the future.

Risk assessment:

The Department is obliged under European Law to fully implement the Gas Directive and Gas Directive Amendment. Failure to fully do so could be deemed a breach of such legal obligations and would expose the UK to infraction proceedings and potentially to substantial financial penalties.

CONSULTATION

There has been previous consultation on the implementation of the 2009 EU Gas Directive in Northern Ireland. The main [consultation paper was published in October 2010](#) which followed an earlier consultation in [December 2009 on the unbundling requirements](#).

The [Department's subsequent decision paper was published in March 2011](#). Following that, the Department made [the Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011](#) ("**the IME3 Regulations**") which came into operation on 15 April 2011 to implement the vast majority of the requirements of the 2009 Gas Directive. The IME3 Regulations made a number of amendments to the Gas Order and the Energy Order. A further set of regulations, [the Gas and Electricity \(Internal Markets\) \(Amendment\) Regulations \(Northern Ireland\) 2013](#) made additional changes to these Orders. The updated text of these Orders can be found at: www.legislation.gov.uk.

The Department undertook a 4-week consultation on the draft Gas (Internal Markets) Regulations 2020 and associated draft Gas (Amendment) (EU Exit) Regulations (NI) 2020 which aim to transpose the requirements of the 2019 Gas Directive Amendment into NI legislation and make any necessary consequential amendments to the Gas Order and Energy Order to ensure that this legislation continues to operate effectively from the end of the transition period following the UK's exit from the EU. A consultation paper outlining the proposed legislative measures, together with draft impact assessments, was placed on the Department's website on 24 September 2020 with responses invited by 23 October 2020. Information on the consultation issued to key stakeholders in the energy sector; organisations on the Department's equality consultation list; and MLAs and MPs. The Department's Twitter feed also alerted interested parties to the consultation. Departmental officials offered to meet with stakeholders to discuss the proposed legislative measures as required during the consultation period.

During the consultation period, the Department responded to three requests for clarification about the proposed measures, one from a gas supply company and two from individuals.

Two written responses were submitted to the consultation. The first provided information on climate change and cautioned that the Department should be wary of any efforts to interpret the proposed legislative measures as an opportunity to expand the gas network in Northern Ireland. The second response did not comment on the specific legislative 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.

The Regulations are **not** being taken forward to promote either gas network extension or gas storage. A regulatory regime for gas transmission pipelines, and for on-shore gas storage (including for the proposed Islandmagee gas storage project at Larne Lough), is already established. The legislative measures are instead designed to ensure legislative provision for effective regulation of a gas transmission pipeline connecting with a third country, or for a gas storage facility sited off-shore in the territorial sea up to 12 nautical miles beyond the coast of

NI, in compliance with EU requirements. As noted, there is no such infrastructure existing or planned in Northern Ireland at present. Further detail on the responses received and the Department's reply is available on the DfE website.

Following consideration of responses received, the Department would propose to proceed to make the proposed Regulations in order to transpose the 2009 Gas Directive and 2019 Gas Directive Amendment requirements.
