EXPLANATORY MEMORANDUM TO

THE GAS (APPLICATIONS FOR LICENCES AND EXTENSIONS) (AMENDMENT NO. 2) REGULATIONS (NORTHERN IRELAND) 2013

SR No. 281

1. INTRODUCTION

1.1 This Explanatory Memorandum has been prepared by the Department of Enterprise, Trade and Investment ('**the Department**') to accompany the above Statutory Rule which is laid before the Northern Ireland Assembly.

1.2 The Statutory Rule is made under Article 8(3) of the Gas (Northern Ireland) Order 1996 ('**the Gas Order**') and is subject to the negative resolution procedure.

2. PURPOSE

2.1 The Statutory Rule updates the Gas (Applications for Licences and Extensions) Regulations (Northern Ireland) 1996 ('**the Gas Applications Regulations**') in order to:

- Incorporate arrangements for applying for the newly created licence to operate a Liquefied Natural Gas ('LNG') facility under Article 8(1)(d) of the Gas Order;
- Update Schedule 1 which provides a Form of Application for anyone wishing to apply for a gas licence; and
- Update Schedule 2 Parts I to III of the Regulations which lists 'Documents and other Particulars' to accompany an application for a gas conveyance, gas storage or gas supply licence.

2.2 DETI has developed the proposed amendments to the Gas Applications Regulations in liaison with the Northern Ireland Authority for Utility Regulation ('**the Authority**') which is responsible for regulating the natural gas industry and, in particular, for processing gas licence applications.

3. BACKGROUND

3.1 The Gas Applications Regulations were established to provide a structured and a regulated system for natural gas companies wishing to apply for a licence to operate within Northern Ireland. They prescribe the manner in which companies may apply for a licence to convey, store or supply gas under Article 8(1) of the Gas (Northern Ireland) Order 1996, or for an extension to an existing gas licence under Article 8(2) of that Order.

3.2 In 2010, the Department made a corresponding set of Regulations namely the Gas (Applications for Licences and Extensions) (Amendment) Regulations (Northern Ireland) 2010 which came into operation on 30 September 2010. The 2010 amending regulations were necessary to update the Gas Applications Regulations to ensure conformity with the requirements of the EU Services Directive 2006.

3.3 In February 2013, the Department further amended the Gas Applications Regulations in light of changes to other relevant pieces of legislation and to correct a small drafting error. These amendments also revised upwards the fees payable with gas licence applications. The Gas (Applications for Licences and Extensions) (Amendment) Regulations (Northern Ireland) 2013 came into operation on the 11 March 2013.

3.4 Following a review of current gas licensing arrangements, the Department is making a number of further amendments to the Gas Applications Regulations which are necessary to (i) ensure that the Regulations incorporate references, where appropriate, to arrangements for applying for the new LNG licence, (ii) update Schedule 1 which contain a Form of Application for all gas licences, and (iii) amend Schedule 2 Parts I – III of the Regulations to update the list of documents which should accompany applications for a gas conveyance, gas storage or gas supply licence. These amendments will, in part, help to facilitate a competition for new gas licences to develop the natural gas infrastructure in Northern Ireland, including to further towns in the West and North-West.

3.5 As mentioned, the natural gas market in Northern Ireland is regulated by the Authority which, line with the principle objectives and duties established under the Energy (Northern Ireland) Order 2003, is obliged to have regard to the need to protect the interests of individuals who are disabled or chronically sick; individuals of pensionable age; and individuals with low incomes. The Gas Applications Regulations are technical and do not impact directly upon natural gas customers but do contribute generally towards the effective regulation of the natural gas industry in Northern Ireland with the best interests of all customers in mind.

4. CONSULTATION

4.1 During a nine week public consultation which ended on 6 September 2013, the Department received three substantive responses from the gas industry which broadly agreed with the proposals to amend the Gas Applications Regulations as outlined above but sought further clarification on a few issues. These comments have been considered and some drafting changes made to the Statutory Rule to address these queries.

4.2 The consultation on the proposed amendments to the Gas Applications Regulations and the Department's decision paper may be found on the DETI website at www.energy.detini.gov.uk/consultations.

5. EQUALITY IMPACT

5.1 The Statutory Rule has been screened for compliance with Section 75 of the Northern Ireland Act 1998. The Department has determined the Rule is largely technical in nature and simply sets out the process for applying for a gas licence; how such applications are to be published; and the fees which should accompany an application. Its key impact will be on companies seeking a natural gas licence to operate in Northern Ireland, or an extension to an existing licence, rather than on individuals. Indirectly, however, there is an overall benefit to natural gas customers from having a structured and regulated system for gas licence applications in Northern Ireland.

5.2 On this basis, the Department has concluded that the Statutory Rule should not have a significant impact on equality of opportunity or good relations for people within any of the equality and good relations categories. It was therefore found that a full EQIA was not considered necessary. The completed equality screening form is attached for further information at **Annex A**.

6. REGULATORY IMPACT

The Department does not consider that the proposed amendments to the Gas Applications Regulations should have a significant cost impact on the small business sector generally. The Statutory Rule will establish appropriate arrangements for applying for the new LNG licence; introduce a new Form of Application for all gas licences; and revise the list of documents and other particulars which should accompany application for a gas conveyance, gas storage or gas supply licence. The primary impact will be on gas companies wishing to apply for a licence to operate in Northern Ireland. More generally, the Statutory Rule will help to ensure a fair and transparent process for assessing applications new licences to develop natural gas infrastructure in Northern Ireland, ultimately making gas available to a range of small businesses in further areas. Therefore, the proposed amendments should have an overall positive impact on small businesses by making updated provision for gas licence applications and therefore potentially increasing their fuel choice and making a more environmentally-friendly and potentially cheaper fuel available to them. The completed Regulatory Impact Assessment is attached for further information at **Annex B.**

7. FINANICAL IMPLICATIONS

The Statutory Rule amending the Gas Applications Regulations is not expected to lead to any additional costs for the Department or the Authority. However, the amendments will mean that the information required from applicants for a gas licence may be slightly more detailed than previously required. This may have some cost implications for companies interested in applying for such a licence as the work involved in drawing up a licence application may be a little greater. However, it is felt that the benefits of establishing a fair and transparent process for assessing licence applications, and ensuring that any company awarded such a licence has the skills, experience and resources required to deliver a major gas infrastructure project, should outweigh these limited additional costs.

8. SECTION 24 OF THE NORTHERN IRELAND ACT 1998

The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied the proposed Rule does not contravene the Act.

9. EU IMPLICATIONS

There are no negative implications for the EU or its Member States.

10. PARITY OR REPLICATORY MEASURE

No.

11. COMMENCEMENT

The Regulations shall come into force on 20th December 2013.

ENERGY DIVISION
DEPARTMENT OF ENTERPRISE, TRADE AND INVESTMENT
28 November 2013

ANNEX A

DETI EQUALITY SCREENING FORM

Part 1. Policy scoping

The first stage of the screening process involves scoping the policy under consideration. The purpose of policy scoping is to help prepare the background and context and set out the aims and objectives for the policy, being screened. At this stage, scoping the policy will help identify potential constraints as well as opportunities and will help the policy maker work through the screening process on a step by step basis.

Public authorities should remember that the Section 75 statutory duties apply to internal policies (relating to people who work for the authority), as well as external policies (relating to those who are, or could be, served by the authority).

Information about the policy

Name of the policy

The Gas (Applications for Licences and Extensions) (Amendment No.2) Regulations (Northern Ireland) 2013 and associated 'Published Criteria'.

Is this an existing, revised or a new policy?

*The draft Gas (Applications for Licences and Extensions) (Amendment No.2) Regulations (Northern Ireland) 2013 amend and update the existing Gas (Applications for Licences and Extensions) Regulations 1996 ("**the Gas Applications Regulations**"). The amended 'Published Criteria' updates the existing 'Published Criteria' against which the Northern Ireland Authority for Utility Regulation ("**the Authority**") assesses applications for new gas licences or extensions to existing licences.*

What is it trying to achieve? (intended aims/outcomes)

The Gas Applications Regulations were established in 1996 to provide a structured and regulated system for natural gas companies wishing to be licensed to operate in Northern Ireland. They prescribe the manner in which:—

- *applications under Article 8(1) of the Gas (Northern Ireland) Order 1996 for licences to convey, store or supply gas; or*
- *applications under Article 8(2) of that Order for extensions of such licences,*

are to be made. The Regulations also prescribe the manner in which such applications are to be published and the fees which should accompany the applications.

*Article 4(2) of the Gas Directive[1] requires that **"Where Member States have a system of authorisation, they shall lay down objective and non-discriminatory criteria which***

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[1] Directive 2009/73/EC of the European Parliament and the Council concerning common rules for the internal market in natural gas ("**the Gas Directive**")

shall be met by an undertaking applying for an authorisation to build and/or operate natural gas facilities or applying for an authorisation to supply natural gas". *In line with this requirement, the Department of Enterprise, Trade and Investment ("**DETI**") has produced Published Criteria against which the Authority will assess an application for a gas licence in Northern Ireland.*

DETI proposes to amend the Gas Applications Regulations in order to:

(i) *Incorporate arrangements for applying for the newly created licence to operate a Liquefied Natural Gas ('LNG') facility under Article 8(1)(d) of the Gas Order;*

(ii) *Update Schedule 1 which provides a Form of Application for anyone wishing to apply for a gas licence; and*

(iii) *Update Schedule 2 Parts I to III of the Regulations which lists 'Documents and other Particulars' to accompany an application for a gas conveyance, gas storage or gas supply licence.*

DETI proposes to make these changes and to update the Published Criteria by which the Authority will assess licence applications in order to ensure that the Gas Applications Regulations and the associated Published Criteria are both up to date and sufficiently detailed to facilitate a robust and transparent process for assessing and granting gas licences.

Are there any Section 75 categories which might be expected to benefit from the intended policy? If so, explain how.

The proposals put forward by DETI to amend the Gas Applications Regulations and the Published Criteria relate to the application process for gas licences in Northern Ireland and are largely technical in nature. As such, it is felt that neither the amended Gas Applications Regulations nor the Published Criteria should have a significant direct impact on any of the Section 75 equality groups, or on particular regions or communities, rural or otherwise. Indirectly, the proposed amendments should have a positive impact by facilitating the award of new gas licences in further areas of Northern Ireland which should make a cleaner, more efficient and potentially cheaper source of fuel available to a greater number of local energy consumers.

Who initiated or wrote the policy?

The existing Gas Applications Regulations were made and laid by the Department of Economic Development (DED). DED's successor, the Department of Enterprise, Trade and Investment (DETI) is now responsible for energy policy in Northern Ireland and for developing legislation to help regulate the natural gas industry. DETI has developed the proposed amendments to the Gas Applications Regulations and the proposed amendments to the Published Criteria in liaison with the Authority who is responsible for regulating the natural gas industry in Northern Ireland and, in particular, for processing gas licence applications.

Implementation factors

Are there any factors which could contribute to/detract from the intended aim/outcome of the policy/decision?

No such factors have been identified.

If yes, are they

☐ financial

☐ legislative

☐ other, please specify _____

Main stakeholders affected

Who are the internal and external stakeholders (actual or potential) that the policy will impact upon?

☐ staff

☐ service users

√ other public sector organisations *(the Authority)*

☐ voluntary/community/trade unions

√ other, please specify: *Natural gas companies wishing to apply for a licence to convey, store or supply gas or to operate an LNG facility in Northern Ireland.*

Other policies with a bearing on this policy

- **what are they?** *The Gas Applications Regulations and the Published Criteria have been drawn up in accordance with powers conferred by the Gas (Northern Ireland) Order 1996. In addition, the Energy (Northern Ireland) Order 2003 sets out DETI and the Authority's overall objectives and general duties in relation to the natural gas industry in Northern Ireland.*

- **who owns them?** *DETI*

Available evidence

Evidence to help inform the screening process may take many forms. Public authorities should ensure that their screening decision is informed by relevant data.

What evidence/information (both qualitative and quantitative) have you gathered to inform this policy? Specify details for each of the Section 75 categories.

Natural gas was introduced to Northern Ireland in 1996. There are two natural gas network companies operating gas distribution networks within Northern Ireland (Phoenix Natural Gas and firmus energy) along with a number of supply companies.

Currently there are around 180,000 natural gas customers in Northern Ireland. These include approximately 160,000 business and domestic customers in the Greater Belfast

licensed area (main supplier - Airtricity), and 18,000 business and domestic customers in the 10 towns/cities licensed area (Londonderry, Coleraine, Limavady, Ballymoney, Ballymena, Antrim, Craigavon, Armagh, Banbridge and Newry) (main supplier - firmus energy). The gas market in the Greater Belfast licensed area was fully opened to supply competition in January 2007 while the gas market in the 10 towns/cities licensed area opened to competition for larger business customers in October 2012 and is scheduled to open for competition for smaller businesses and domestic customers in April 2015.

As previously stated, the natural gas market in Northern Ireland is regulated by the Authority, in line with the principal objectives and duties established under the Energy (Northern Ireland) Order 2003, which require the Authority to have regard to the need to protect the interests of individuals who are disabled or chronically sick; individuals of pensionable age; and individuals with low incomes.

The Gas Applications Regulations and the Published Criteria themselves, however, are technical in nature and simply set out the process for applying for a gas licence; how such applications are to be published; the fees which should accompany an application; and how such applications will be assessed by the Authority. They do not impact directly upon natural gas customers but do contribute generally towards the effective regulation of the natural gas industry in Northern Ireland with the best interests of customers in mind.

Section 75 category	**Details of evidence/information**
Religious belief	*The proposed amendments to the Gas Applications Regulations and the Published Criteria will impact on companies applying for a gas licence rather than directly on individuals in any of the Section 75 categories.*
Political opinion	*As above*
Racial group	*As above*
Age	*As above*
Marital status	*As above*
Sexual Orientation	*As above*
Men and women generally	*As above*

Disability	*As above*
Dependants	*As above*

Needs, experiences and priorities

Taking into account the information referred to above, what are the different needs, experiences and priorities of each of the following categories, in relation to the particular policy/decision? Specify details for each of the Section 75 categories

Section 75 category	Details of needs/experiences/priorities
Religious belief	*It is not considered that individuals in any of the Section 75 categories would have different needs in relation to the Gas Applications Regulations and Published Criteria.*
Political opinion	*As above*
Racial group	*As above*
Age	*As above*
Marital status	*As above*
Sexual orientation	*As above*
Men and women generally	*As above*
Disability	*As above*
Dependants	*As above*

Part 2. Screening questions

Introduction

In making a decision as to whether or not there is a need to carry out an equality impact assessment, the public authority should consider its answers to the questions 1-4 detailed below.

If the public authority's conclusion is **none** in respect of all of the Section 75 equality of opportunity and/or good relations categories, then the public authority may decide to screen the policy out. If a policy is 'screened out' as having no relevance to equality of opportunity or good relations, a public authority should give details of the reasons for the decision taken.

If the public authority's conclusion is **major** in respect of one or more of the Section 75 equality of opportunity and/or good relations categories, then consideration should be given to subjecting the policy to the equality impact assessment procedure.

If the public authority's conclusion is **minor** in respect of one or more of the Section 75 equality categories and/or good relations categories, then consideration should still be given to proceeding with an equality impact assessment, or to:

- measures to mitigate the adverse impact; or
- the introduction of an alternative policy to better promote equality of opportunity and/or good relations.

In favour of a 'major' impact

a) The policy is significant in terms of its strategic importance;
b) Potential equality impacts are unknown, because, for example, there is insufficient data upon which to make an assessment or because they are complex, and it would be appropriate to conduct an equality impact assessment in order to better assess them;
c) Potential equality and/or good relations impacts are likely to be adverse or are likely to be experienced disproportionately by groups of people including those who are marginalised or disadvantaged;
d) Further assessment offers a valuable way to examine the evidence and develop recommendations in respect of a policy about which there are concerns amongst affected individuals and representative groups, for example in respect of multiple identities;
e) The policy is likely to be challenged by way of judicial review;
f) The policy is significant in terms of expenditure.

In favour of 'minor' impact

a) The policy is not unlawfully discriminatory and any residual potential impacts on people are judged to be negligible;
b) The policy, or certain proposals within it, are potentially unlawfully discriminatory, but this possibility can readily and easily be eliminated by making appropriate changes to the policy or by adopting appropriate mitigating measures;
c) Any asymmetrical equality impacts caused by the policy are intentional because they are specifically designed to promote equality of opportunity for particular groups of disadvantaged people;
d) By amending the policy there are better opportunities to better promote equality of opportunity and/or good relations.

In favour of none

a) The policy has no relevance to equality of opportunity or good relations.
b) The policy is purely technical in nature and will have no bearing in terms of its likely impact on equality of opportunity or good relations for people within the equality and good relations categories.

Taking into account the evidence presented above, consider and comment on the likely impact on equality of opportunity and good relations for those affected by this policy, in any way, for each of the equality and good relations categories, by applying the screening questions detailed below and indicate the level of impact on the group i.e. minor, major or none.

Screening questions

1. What is the likely impact on equality of opportunity for those affected by this policy, for each of the Section 75 equality categories? minor/major/none		
Section 75 category	Details of policy impact	Level of impact? minor/major/none
Religious belief	*Updating the Gas Applications Regulations and the Published Criteria, which are designed to provide a structured and regulated system for natural gas companies wishing to be licensed to operate in Northern Ireland, should contribute generally, if indirectly, towards protecting customers. It is not envisaged that the proposed amendments will impact directly upon equality of opportunity for any of the Section 75 categories.*	*None*
Political opinion	*As above*	*None*
Racial group	*As above*	*None*
Age	*As above*	*None*
Marital status	*As above*	*None*
Sexual orientation	*As above*	*None*
Men and women generally	*As above*	*None*

Disability	*As above*	*None*
Dependants	*As above*	*None*

2. Are there opportunities to better promote equality of opportunity for people within the Section 75 equality categories?		
Section 75 category	If **Yes**, provide details	If **No**, provide reasons
Religious belief		*The Gas Applications Regulations and the Published Criteria are largely technical in nature, establishing the process for applying for a gas licence and for publishing such applications; setting out the fees which should accompany an application; and detailing how such applications will be assessed by the Authority. As such, neither document offers any real opportunity to better promote equality of opportunity.*
Political opinion		*As above*
Racial group		*As above*
Age		*As above*
Marital status		*As above*
Sexual orientation		*As above*

Men and women generally		*As above*
Disability		*As above*
Dependants		*As above*

3. To what extent is the policy likely to impact on good relations between people of different religious belief, political opinion or racial group?		
Section 75 category	**Details of policy impact**	**Level of impact minor/major/none**
Religious belief	*No impact*	*None*
Political opinion	*No impact*	*None*
Racial group	*No impact*	*None*

4. Are there opportunities to better promote good relations between people of different religious belief, political opinion or racial group?		
Good relations category	If **Yes**, provide details	If **No**, provide reasons
Religious belief		*The Gas Applications Regulations and the Published Criteria are largely technical in nature, establishing the process for applying for a gas licence and for publishing such applications; setting out the fees which should accompany an application; and detailing how such applications will be assessed by the Authority. As such, neither document offers any real opportunity to better promote good relations.*
Political Opinion		*As above*
Racial group		*As above*

Additional considerations

Multiple identity

Generally speaking, people can fall into more than one Section 75 category. Taking this into consideration, are there any potential impacts of the policy/decision on people with multiple identities?
(*For example; disabled minority ethnic people; disabled women; young Protestant men; and young lesbians, gay and bisexual people).*

No

Provide details of data on the impact of the policy on people with multiple identities. Specify relevant Section 75 categories concerned.

See above

Part 3. Screening decision

If the decision is not to conduct an equality impact assessment, please provide details of the reasons.

A full Equality Impact Assessment is not considered necessary. The Gas Applications Regulations and the Published Criteria are largely technical in nature, establishing the process for applying for a gas licence and for publishing such applications; setting out the fees which should accompany an application; and detailing how such applications will be assessed by the Authority. As such, the proposed amendments to these documents will impact directly upon companies wishing to apply for a gas licence but will not offer any real opportunities to promote greater equality of opportunity between any of the Section 75 categories or to promote good relations. However, the Regulations and Published Criteria are part of an overall regulatory regime for natural gas in Northern Ireland which is intended to protect customers, particularly vulnerable customers.

If the decision is not to conduct an equality impact assessment the public authority should consider if the policy should be mitigated or an alternative policy be introduced.

As no adverse impacts have been identified, mitigatory or alternative action is not considered necessary.

If the decision is to subject the policy to an equality impact assessment, please provide details of the reasons.

Not applicable

All public authorities' equality schemes must state the authority's arrangements for assessing and consulting on the likely impact of policies adopted or proposed to be adopted by the authority on the promotion of equality of opportunity. The Commission recommends screening and equality impact assessment as the tools to be utilised for such assessments. Further advice on equality impact assessment may be found in a separate Commission publication: Practical Guidance on Equality Impact Assessment.

Mitigation

When the public authority concludes that the likely impact is 'minor' and an equality impact assessment is not to be conducted, the public authority may consider mitigation to lessen the severity of any equality impact, or the introduction of an alternative policy to better promote equality of opportunity or good relations.

Can the policy/decision be amended or changed or an alternative policy introduced to better promote equality of opportunity and/or good relations?

If so, give the reasons to support your decision, together with the proposed changes/amendments or alternative policy.

Not applicable.

Timetabling and prioritising

Factors to be considered in timetabling and prioritising policies for equality impact assessment

If the policy has been **'screened in'** for equality impact assessment, then please answer the following questions to determine its priority for timetabling the equality impact assessment.

On a scale of 1-3, with 1 being the lowest priority and 3 being the highest, assess the policy in terms of its priority for equality impact assessment.

Priority criterion	**Rating (1-3)**
Effect on equality of opportunity and good relations	*1*
Social need	*1*
Effect on people's daily lives	*1*
Relevance to a public authority's functions	*3*

Note: The Total Rating Score should be used to prioritise the policy in rank order with other policies screened in for equality impact assessment. This list of priorities will assist the public authority in timetabling. Details of the Public Authority's Equality Impact Assessment Timetable should be included in the quarterly Screening Report.

Is the policy affected by timetables established by other relevant public authorities?

No.

If yes, please provide details

Part 4. Monitoring

Public authorities should consider the guidance contained in the Commission's Monitoring Guidance for Use by Public Authorities (July 2007).

The Commission recommends that where the policy has been amended or an alternative policy introduced, the public authority should monitor more broadly than for adverse impact (See Benefits, P.9-10, paras 2.13 – 2.20 of the Monitoring Guidance).

Effective monitoring will help the public authority identify any future adverse impact arising from the policy which may lead the public authority to conduct an equality impact assessment, as well as help with future planning and policy development.

Part 5. Disability Duties

Under the Disability Discrimination Act 1995 (as amended by the Disability Discrimination (Northern Ireland) Order 2006), public authorities, when exercising their functions, are required to have due regard to the need:

- **to promote positive attitudes towards disabled people; and**
- **to encourage participation by disabled people in public life.**

Does this policy/legislation have any potential to contribute towards promoting positive attitudes towards disabled people or towards encouraging participation by disabled people in public life? If yes, please give brief details.

No.

[signed]

Fiona Hepper
Head of Division

Division: **Energy Division**

Date: **28 November 2013**

PLEASE FORWARD A COPY OF THIS COMPLETED FORM TO:

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ANY QUERIES: **SHARON SMYTH EXT 29524**
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ANNEX B

REGULATORY IMPACT ASSESSMENT

GAS (APPLICATIONS FOR LICENCES AND EXTENSIONS) (AMENDMENT NO. 2) REGULATIONS (NORTHERN IRELAND) 2013

REVISED PUBLISHED CRITERIA

1. **Title**

The Gas (Applications for Licences and Extensions) (Amendment No.2) Regulations (Northern Ireland) 2013

Revised Published Criteria

2. **Introduction**

2.1 This Regulatory Impact Assessment (RIA) supports legislative amendments to the Gas (Applications for Licences and Extensions) Regulations (Northern Ireland) 1996 **('the Gas Applications Regulations')** which aim to provide a structured and regulated system for natural gas companies wishing to be licensed to operate in Northern Ireland. The RIA also supports amendments to the Published Criteria against which the Northern Ireland Authority for Utility Regulation (**'the Authority'**) will assess applications for gas licences.

Gas Applications Regulations

2.2 The Department of Enterprise, Trade and Investment ('**the Department'**) proposes to amend the Gas Applications Regulations in order to:

- Incorporate arrangements for applying for the newly created licence to operate a Liquefied Natural Gas ('LNG') facility under Article 8(1)(d) of the Gas Order;
- Update Schedule 1 which provides a Form of Application for anyone wishing to apply for a gas licence; and
- Update Schedule 2 Parts I to III of the Regulations which lists 'Documents and other Particulars' to accompany an application for a gas conveyance, gas storage or gas supply licence.

2.3 In 2010, the Department made a corresponding set of Regulations namely the Gas (Applications for Licences and Extensions) (Amendment) Regulations (Northern Ireland) 2010 which came into operation on 30 September 2010. The 2010 amending regulations were necessary to update the Gas Applications Regulations to ensure conformity with the requirements of the EU Services Directive 2006.

2.4 In February 2013, the Department further amended the Gas Applications Regulations in light of changes to other relevant pieces of legislation and to correct a small drafting error. These amendments also revised upwards the fees payable with gas licence applications. The Gas (Applications for Licences and Extensions) (Amendment) Regulations (Northern Ireland) 2013 came into operation on the 11 March 2013.

Published Criteria

2.5 Article 4(2) of the Gas Directive[2] requires that *"Where Member States have a system of authorisation, they shall lay down objective and non-discriminatory criteria which shall be met by an undertaking applying for an authorisation to build and/or operate natural gas facilities or applying for an authorisation to supply natural gas".* In line with this requirement, the Department has produced Published Criteria against which the Authority will assess an application for a gas licence in Northern Ireland. The Published Criteria was recently updated to add information in respect of applications for a gas storage or LNG licence, and applications for consent to construct gas storage or LNG facilities, in order to ensure compliance with the Gas Directive. The current set of Published Criteria is available on the Department's website at:

http://www.detini.gov.uk/energy-guidance-2

2.6 The Department has recently reviewed the Published Criteria again and would propose to add a new section to the document which outlines the specific selection and assessment criteria by which the Authority should determine the grant of an exclusive gas conveyance licence from a number of applicants. This is aimed at ensuring that the procedures which are to be followed in granting any new exclusive gas conveyance licences are both transparent and objective.

3. Purpose and intended effect

3.1 Objectives

Proposed amendments to the Gas Applications Regulations

The proposed amendments to the Gas Applications Regulations will ensure that appropriate arrangements are in place for applications for the newly created LNG licence. Furthermore, the update of Schedule 1 which contains a Form of Application for all gas licences and amendment of Schedule 2 Parts I to III listing the documents which should accompany applications for a gas conveyance, gas storage or gas supply licence, will help to ensure that each application for a gas licence is made in an appropriate format and accompanied by all necessary supporting information. This will in turn help to ensure consistency across licence applications and, in particular, to help to facilitate the fair and effective assessment of applications for new gas conveyance licence(s) to develop the natural gas network infrastructure in areas of Northern Ireland

[2] Directive 2009/73/EC of the European Parliament and the Council concerning common rules for the internal market in natural gas ("**the Gas Directive**")

which currently lie outside the licensed gas network, e.g. in the West and parts of the North-West of Northern Ireland.

Proposed amendments to Published Criteria

The Department also proposes to amend the Published Criteria against which the Authority will assess any licence application. This will, in particular, add a new section to the Published Criteria which outlines the specific selection and assessment criteria by which the Authority should determine the grant of an exclusive conveyance licence based on applications from a number of companies. This is aimed at ensuring that the procedures which are to be followed in granting any new exclusive conveyance licences are both transparent and objective.

3.2 **Background**

3.2.1 Unlike the rest of the United Kingdom, due to unfavourable economics, Northern Ireland did not have access to the supplies of natural gas until the 1990's. In 1992, however, as part of the restructuring and privatisation of the local electricity supply industry, Ballylumford Power Station was converted from oil to gas firing. This base load requirement provided the opportunity for the development of a commercially viable downstream natural gas industry in Northern Ireland.

3.2.2 In September 1996, a licence was granted to Phoenix Natural Gas Ltd (PNG) for the staged development of the industrial, commercial and domestic gas markets in the Greater Belfast and Larne areas. There are currently over 160,000 customers connected to natural gas in the PNG licensed area.

3.2.3 On 21 September 2001, the Northern Ireland Executive announced support for the development of a further multi-million pound gas pipeline project. The support was in the form of a grant package up to £38m, including an Irish Government contribution of £8.5m. The project involved construction by BGE Northern Ireland of two new gas transmission pipelines. That is, a gas pipeline from Dublin to Antrim (the South-North pipeline) which was completed in October 2006 and provides natural gas to Newry, Armagh, Banbridge, Craigavon and Antrim. This pipeline links with the second new pipeline which runs from near Carrickfergus to Londonderry (the North-West pipeline). This pipeline was completed in November 2004 and supplies gas to Coolkeeragh power station and to Ballymena, Ballymoney, Coleraine, Limavady and Londonderry.

3.2.4 *firmus energy*, a subsidiary of BGE, is continuing with the roll-out of the natural gas distribution networks in the 'Ten Towns' licence area served by both pipelines. The company currently has around 20,000 customers connected to natural gas.

3.2.5 In 2011, the Department conducted a public consultation on the potential for extending the natural gas network to further areas of Northern Ireland. The majority of responses, particularly those from the natural gas sector, local industry and the public sector, were strongly supportive of extending

the natural gas network to both the West/North West and East Down. Subsequently, at their meeting on 10 January 2013, the Northern Ireland Executive agreed to provide financial support up to £32.5m to assist the extension of the natural gas network to seven additional towns in the West and North-West of Northern Ireland, namely namely Dungannon, Cookstown, Magherafelt, Coalisland, Omagh, Enniskillen/Derrylin and Strabane. The Authority will be responsible for the grant of the necessary licences, under Article 8 of the Gas Order, and would propose to issue an invitation for applications for an exclusive gas conveyance licence(s) by the end of 2013.

4. Risk Assessment

4.1 The proposed changes to the Gas Applications Regulations are required to (i) ensure that the Regulations incorporate references, where appropriate, to arrangements for applying for the newly created LNG licence; (ii) update Schedule 1 which contain a Form of Application for all gas licences; and (iii) amend Schedule 2 Parts I – III of the Regulations to update the list of documents which should accompany applications for a gas conveyance, gas storage or gas supply licence. These amendments will, in part, help to facilitate consideration of applications for new gas conveyances licences, including applications for the West and North West, as well as ensuring a consistent approach to all applications for gas licences.

The proposed changes to the Published Criteria will provide additional clarity, make the document more succinct and add a new section detailing the selection and assessment criteria which the Authority will use to assess applications and grant an exclusive gas conveyance licence in a situation where more than one applicant applies for an exclusive licence, or an extension of an existing licence, over the same area at approximately the same time.

Without these proposed amendments, there would be no appropriate legislative provision for applying for an LNG licence and the basis for assessing applications for gas licences in new areas, such as the West and North West, might not be as transparent and objective as possible.

4.2 **Options**

- **Option 1 – do nothing**

  If the Gas Applications Regulations are not updated, the arrangements for applying for an LNG licence will not be established in legislation. Furthermore, gas companies wishing to apply for a gas conveyance licence to develop new gas infrastructure, for example in the West and North-West, may have insufficient guidance on the information to be provided and on the selection and assessment criteria to be used by the Authority in assessing applications. This could cause uncertainty and even delay particular projects. <u>This option is not carried forward</u>.

- **Option 2 – implement the proposed amending regulations**

  This option would entail taking forward a number of amendments to the Gas Applications Regulations as outlined in Chapter 2 of the consultation paper. It would also involve revising and adding a new section to the Published Criteria as outlined in Chapter 3 of the consultation paper. These amendments would establish appropriate arrangements for applying for the newly created LNG licence and provide additional clarity on the documents and other particulars which should accompany a gas licence application. They would also establish the clear and objective selection and assessment criteria which the Authority would use to assess applications for an exclusive gas conveyance licence. Together these changes should help to establish a fair and transparent basis for assessing applications for new gas licences, for example in the West and North-West, and thus ensure that the Authority can proceed in a timely fashion with the application process for new gas conveyance licences in areas of Northern Ireland which are currently unlicensed. This option is carried forward.

5. Cost Benefit Analysis

A summary of the costs and benefits of the proposed legislative measures and amendments to the Published Criteria may be outlined as follows:

5.1 Arrangements for applying for the new LNG licence

Background

The Gas Applications Regulations were established to provide a structured and regulated system for natural gas companies wishing to be licensed to operate in Northern Ireland. They currently set out the manner and form in which applications for a licence to convey, store or supply natural gas, or for an extension to an existing gas licence, should be made together with the fee payable for each type of application. In addition, they specify the information that applicants must provide in order for the Authority to consider granting a licence.

The Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2013, which came into operation on 12 April 2013, created a new category of gas licence which may be granted by the Authority under Article 8(1) of the Gas Order, that is, (d) a licence to operate an LNG facility. Northern Ireland does not have any LNG facilities at present and none are planned or anticipated but operating a LNG facility has been made a licensable activity in order to comply with the Gas Directive which is part of the Third Energy Package of European legislation. Having created a newly licensable activity, the Department would propose to amend the Gas Applications Regulations in order to incorporate appropriate references to the LNG licence and to specify a fee of £2,000 which would be payable upon application for such a licence.

Potential Costs and Benefits

The main benefit of the proposed amendments is the establishment in legislation of appropriate arrangements for dealing with applications for the newly created LNG licence, completing our delivery of compliance with the LNG requirements within the EU Gas Directive. It is not anticipated that these amendments will have any negative impacts. In practice, as there is not expected to be any applications for an LNG licence in Northern Ireland in the foreseeable future, there should be no impact on businesses.

5.2 **Update of Schedule 1 of the Gas Applications Regulations, amendment of Schedule 2 Parts I to III and revision of the Published Criteria**

Background

The proposed amendments to Schedule 1 of the Gas Applications Regulations; amendments to Schedule 2 Parts I to III; and revision of the Published Criteria will provide a new Form of Application for all gas licences; update the list of documents which must accompany an application for a gas conveyance, gas storage or gas supply licence; and revise and update the Published Criteria in order to establish the detailed selection and assessment criteria which will be applied by the Authority in processing applications for an exclusive gas conveyance licence.

Potential Costs and Benefits

If these changes are implemented, the information required from applicants for a gas licence, particularly in relation to an exclusive gas conveyance licence, may be more detailed than that previously required. This may have some cost implications for companies interested in applying for such a licence as the work involved in drawing up a licence application may be greater. However, it is felt that the benefits of establishing a fair and transparent process for assessing licence applications should outweigh these limited additional costs. The Department, in close liaison with the Authority, has given very careful consideration in particular to the selection and assessment criteria which should be included in a new section in the Published Criteria. It is felt that these criteria are necessary to (i) ensure a fair and transparent process for dealing with applications for an exclusive gas conveyance licence, and (ii) ensure that any company awarded such a licence has the skills, experience and resources to deliver a major gas infrastructure project.

5.3 More generally, the Department has carried out an equality screening exercise and has determined that the proposed amendments to the Gas Applications Regulations and to the Published Criteria should not have a differential impact on individuals in any of the Section 75 categories.

The Gas Applications Regulations and the Published Criteria are largely technical in nature and simply set out the process for applying for a gas licence; how such applications are to be published; and the fees which should accompany an application. It is likely the key impact will be on companies seeking a natural gas licence to operate in Northern Ireland or an extension to an existing licence. Indirectly, however, there should be an overall benefit to

natural gas customers from having a structured and regulated system for gas licence applications in Northern Ireland.

6. Concentration of Small Business: The Small Business Impact Test

The Department does not consider that the proposed amendments to the Gas Applications Regulations and to the Published Criteria should have a significant cost impact on the small business sector generally. The amending Regulations will establish appropriate arrangements for applying for the newly created LNG licence; introduce a new Form of Application for all gas licences; and revise the list of documents and other particulars which should accompany application for a gas conveyance, gas storage or gas supply licence. The primary impact will be on gas companies wishing to apply for a licence to operate in Northern Ireland. More generally, the amending Regulations and the revised Published Criteria will help to ensure a fair and transparent process for assessing applications for licences to develop new natural gas infrastructure in Northern Ireland, including in the West and North West, ultimately making gas available to a range of small businesses in selected towns in this area. Therefore, the proposed amendments should have an overall positive impact on small businesses by increasing their fuel choice and making a more environmentally-friendly and potentially cheaper fuel such as natural gas available to them.

7. Environmental Impact

Natural gas is the cleanest fossil fuel. As such, the proposed amendments should, by contributing towards the effective regulation of the natural gas sector, help to facilitate and encourage the use of natural gas and reduce carbon emissions.

8. Enforcement and Sanctions

The Gas Applications Regulations and the Published Criteria help to establish a fair and objective system for awarding gas licences. The conditions attached to any such licence awarded will be enforced by the Authority who has the power to impose financial penalties of up to 10% of the turnover of the licensee in the event of a breach.

9. Monitoring and Review

The Department, in liaison with the Authority, will monitor the operation of the amending Regulations and conformity to the Published Criteria to assess if this is delivering the anticipated benefits.

10. Consultation

The consultation and the Department's decision paper on the proposed amendments to the Gas Applications Regulations and the Published Criteria may be found on the Department's website at www.energy.detini.gov.uk/consultations.

11. **Summary and Recommendation**

On the basis of the assessment of the costs and benefits that have been identified, the Department is of the opinion that there will be no significant negative impact brought about by the introduction of the proposed amending Regulations and the amendments to the Published Criteria.

Declaration

"I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs."

[signed]

ARLENE FOSTER MLA
Minister of Enterprise, Trade and Investment

18 November 2013