EXPLANATORY MEMORANDUM TO

THE GAS (APPLICATIONS FOR LICENCES AND EXTENSIONS) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2013

SR 2013 No. 24

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 to be laid before the Northern Ireland Assembly. The Explanatory Memorandum is designed to assist the reader in understanding the Regulations. It does not form part of the Regulations.

1.2 The Regulations amend The Gas (Applications for Licences and Extensions) Regulations (Northern Ireland) 1996 (the 'Gas Applications Regulations') which 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. The Gas Applications Regulations 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.

2. PURPOSE

2.1 The Statutory Rule updates the Gas Applications Regulations in order to:

- Reflect the removal of the Department's consenting role in the gas licence application process following implementation of the Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011;
- Correct a small drafting error in Schedule 1, paragraph 4 of the Regulations;
- Update all references to the "the Director" to "the Authority" to reflect the current name for the NI Authority for Utility Regulation;
- Update all references to the Companies (NI) Order 1986 to reflect the more recent UK Companies Act 2006; and
- Revise upwards the fees payable for a gas conveyance, storage or supply licence, as well as the fees payable with an application for an extension of a licence.

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

3. BACKGROUND

3.1 The proposed amendments will revise licence application fees upwards in order to better reflect the actual cost of administering the licence application process; update arrangements for the lodgement and publication of gas licence applications by removing references to the Department; update references to the Director to 'the Authority' to reflect the current name for NIAUR; update references to the Companies (NI) Order 1986 to reflect the more recent Companies Act 2006; and tidy up a small drafting error.

3.2 The amended Gas Applications Regulations will impact directly on companies seeking a gas licence to operate in Northern Ireland or an extension to an existing licence. It is likely that the key impact felt by such companies will relate to the proposed rise in the licence application fees. These fees have not been updated since 1996 and require revision to better reflect the actual cost to NIAUR of assessing an application, drafting a licence for consultation and then granting a licence. If the fees are not updated, the public purse will have to absorb excessive unrecovered costs.

3.3 As mentioned, the natural gas market in Northern Ireland is regulated by NIAUR 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 customers in mind.

4. CONSULTATION

4.1 During a three-month public consultation which ended on 7 December 2012, the Department received one response which accepted the need to amend the Gas Applications Regulations as outlined above.

4.2 The Consultation Paper, and its annexes, which included a draft set of Regulations, can be assessed at: http://www.detini.gov.uk/consultation_document__gas_licence_apps_regs__.pdf

5. EQUALITY IMPACT

5.1 The Regulations have been screened for compliance with Section 75 of the Northern Ireland Act 1998. The Department has determined the Regulations 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. Their 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. Moreover, the proposed increase in gas licence fees is designed to ensure that the fees paid by natural

gas companies more closely reflect the cost of administering the licence application process, thus ensuring that utility consumers are not required to contribute towards meeting any shortfall.

5.2 On this basis, the Department has concluded that the Regulations should not have a negative 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 there will be a significant cost impact on the business sector. The Gas Applications Regulations will revise upwards the fees payable with applications to NIAUR for the conveyance, storage and supply of gas. However, these represent a relatively small increase in costs for an energy company wishing to apply for a gas licence in Northern Ireland and should not present a significant difficulty. The completed Regulatory Impact Assessment is attached for further information at **Annex B.**

7. FINANICAL IMPLICATIONS

The proposed amendments to the Gas Applications Regulations will not lead to any additional costs for the Department or NIAUR, however, companies wishing to obtain a licence to convey, store or supply natural gas in Northern Ireland will have to pay a higher fee to apply for a licence. The revised application fees for a gas conveyance or a gas storage licence (£2,000) should, however, represent a relatively small outlay for these companies when compared to their initial set-up costs overall. The proposed application fee for a gas supply licence is £750, which should not deter applications, and therefore new competitors from entering the gas supply market in Northern Ireland. The revised fee for an extension to an existing licence is only £300.

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 11th March 2013.

ENERGY DIVISION
DEPARTMENT OF ENTERPRISE, TRADE AND INVESTMENT
7 February 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) Regulations (Northern Ireland) 2013

Is this an existing, revised or a new policy?

*The Gas (Applications for Licences and Extensions) (Amendment) Regulations (Northern Ireland) 2013 amend and update the existing Gas (Applications for Licences and Extensions) Regulations 1996 ("**the Gas Applications Regulations**").*

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. These Regulations 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.

The Department of Enterprise, Trade and Investment proposes to amend these Regulations in order to:

- *Reflect the removal of the Department's consenting role in the gas licence application process following implementation of the Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011;*
- *Correct a small drafting error in relation to paragraph 4 of Schedule 1;*
- *Update all references to the "Director" to the "Authority";*
- *Update all references to the Companies (NI) Order 1986 to reflect the more recent UK Companies Act 2006; and*
- *Revise upwards the fees payable upon application for a gas conveyance, storage or supply licence or for an extension to such licences.*

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

*The Gas (Applications for Licences and Extensions) (Amendment) Regulations (Northern Ireland) 2013 will impact directly on companies seeking a natural gas licence to operate in Northern Ireland or an extension to an existing licence. It is likely that the key impact felt by such companies as a result of the proposed amendments to the existing Gas Applications Regulations will relate to the rise in the licence application fees. These fees have not been updated since 1996 and require revision to ensure that they better reflect the actual cost to Northern Ireland Authority for Utility Regulation (**NIAUR**) of administrating the licence application process. If the fees are not updated, utility consumers would ultimately have to absorb any unrecovered costs.*

Apart from the overall benefit to utility consumers in general, the proposed amendments to the Gas Applications Regulations are not expected to directly benefit individuals in any of the Section 75 categories.

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 in liaison with NIAUR which is responsible for regulating the natural gas industry and, in particular, for processing gas licence applications.

Who owns and who implements the policy?

DETI owns and, in liaison with NIAUR, will implement the policy.

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

☐ voluntary/community/trade unions

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

Other policies with a bearing on this policy

• what are they?

The Gas Applications Regulations, and any amendments to these Regulations, 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 NIAUR'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 and a number of supply companies.

Currently there are over 160,000 natural gas customers in Northern Ireland. These include approximately 150,000 business and domestic customers in the Greater Belfast licensed area (distributor – Phoenix Natural Gas), and 16,500 business and domestic customers in the 10 towns/cities licensed area (Londonderry, Coleraine, Limavady, Ballymoney, Ballymena, Antrim, Craigavon, Armagh, Banbridge and Newry) (distributor - 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 in October 2012 for large industrial and commercial customers and, for smaller businesses and domestic customers, is scheduled to open to competition in April 2015.

As previously stated, the natural gas market in Northern Ireland is regulated by NIAUR who, 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 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; and the fees which should accompany an application. 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 Regulations 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.*
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

The impact of this legislation will have no significant implications for equality of opportunity. All groups will have the opportunity to choose their gas supplier regardless of their economic or social standing in the community and this could improve their gas supplier.

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	*By updating the Gas Applications Regulations which are designed to provide a structured and regulated system for natural gas companies wishing to be licensed to operate in Northern Ireland, the proposed amendments should contribute generally 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 are technical in nature, establishing the processes for applying for a gas licence and for publishing such applications as well as setting out the fees which should accompany an application. As such, the regulations do not offer any opportunities 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 are technical in nature, establishing the processes for applying for a gas licence and for publishing such applications as well as setting out the fees which should accompany an application. As such, the regulations do not offer any opportunities 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).*

The Gas Applications Regulations are technical in nature, establishing the processes for applying for a gas licence and for publishing such applications, as well as setting out the fees which should accompany an application. As such, it is not considered that the proposed amendments to the Regulations should impact directly upon people with multiple identities.

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 deemed necessary. The Gas Regulations are technical in nature, establishing the processes for applying for a gas licence and for publishing such applications, as well as setting out the fees which should accompany an application. The proposed amendments to the Regulations will impact upon companies wishing to apply for a gas licence but not directly upon individuals. However, the regulations are part of an overall regulatory regime for natural gas in Northern Ireland which is intended to protect customers, and 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.

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: **16 January 2013**

PLEASE FORWARD A COPY OF THIS COMPLETED FORM TO:

DETI EQUALITY & DIVERSITY UNIT
NETHERLEIGH

MASSEY AVENUE
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ANY QUERIES: **STEPHEN WILSON EXT 29373**
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Annex B

REGULATORY IMPACT ASSESSMENT

GAS (APPLICATIONS FOR LICENCES AND EXTENSIONS) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2013

1. **Title**

The Gas (Applications for Licences and Extensions) (Amendment) Regulations (Northern Ireland) 2013

2. **Introduction**

2.1 This Regulatory Impact Assessment supports a number of 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.

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

- Reflect the removal of the Department's consenting role in the gas licence application process following implementation of the Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011;
- Correct a small drafting error in relation to paragraph 4 of Schedule 1;
- Update all references to the "the Director" to "the Authority" to reflect the current name for the Northern Ireland Authority for Utility Regulation (**NIAUR**);
- Update all references to the Companies (NI) Order 1986 to reflect the more recent UK Companies Act 2006; and
- Revise upwards the fees payable for a gas conveyance, storage or supply licence as well as the fee payable with an application for an extension of a 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 ensure conformity to the requirements of the EU Services Directive 2006.

3. Purpose and intended effect

3.1 Objectives

Reflect removal of Department's consenting role in the licensing process

3.1.1 As part of the implementation in Northern Ireland of the EU Third European Package of Directives and Regulations on market liberalisation in the energy sector (IME3), the Department brought forward The Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 which amended Article 8(1) and Article 8(2) of the Gas (Northern Ireland) Order 1996 by removing the Department's consenting role in the gas licence application process. The powers to grant a gas conveyance, storage or supply licence, or to extend an existing gas licence, now lie solely with NIAUR.

In order to reflect this change in the Department's role in the gas licence application process, it is proposed that all references to the Department in regulations 5(b), 6(2) and 6(3) in the Gas Applications Regulations should be removed. These regulations cover arrangements for the lodgement and publication of gas licence applications and should now reference only NIAUR.

Correction of small drafting error

3.1.2 The amending regulations will remove the word 'resident' from Schedule 1 of the Gas Applications Regulations. The word 'resident' was left in error when the 2010 amending regulations were made and implemented.

Update references to "the Director" and to "Companies (NI) Order 1986

3.1.3 The amending regulations will ensure that references to "the Director" are updated to read "the Authority" in acknowledgement of the current name for the Northern Ireland Authority for Utility Regulation.

They will also ensure that references to companies' legislation in the Gas Applications Regulations are updated to reflect the fact that the Companies (NI) Order 1986 has now been superseded by the UK Companies Act 2006.

Licence allocation fees

3.1.4 Finally, the amending regulations will revise upwards the fees payable with licence applications to NIAUR for the conveyance, storage and supply of gas. The revised application fees should better reflect the actual cost of administering the licence application process so that utility consumers do not ultimately have to absorb any excessive unrecovered costs.

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 some 150,000 customers connected to natural gas in the PNG licensed area.

3.2.3 In 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, are continuing with the roll-out of the natural gas distribution networks in the '10 towns' licence area served by both pipelines. The company currently has around 16,500 customers connected.

3.2.5 On 1 January 2007, the natural gas supply market was fully opened to competition in the PNG licensed area of Greater Belfast and Larne. In *firmus energy's '*10 towns' licensed area, the natural gas supply market was opened to competition in respect of large industrial and commercial customers in October 2012. However, for small industrial and commercial and domestic customers, competition will not be introduced until April 2015.

4. **Risk Assessment**

4.1 One of the key changes to be implemented under the proposed amending regulations concerns an increase in the fees to be submitted with an application to NIAUR for a gas conveyance, storage and supply licence, or an extension to an existing licence. These fees have not been reviewed since they were originally established in 1996 and NIAUR has made the Department aware that, at present, they do not reflect the actual cost of administering a licence application. If the licence application fees are not reviewed, utility consumers will ultimately have to absorb unrecovered costs.

Another key change is the removal of references to "the Department" in the Gas Applications Regulations in line with the removal of its consenting role in the gas licence application process following implementation of the Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011. The Gas Applications Regulations cover arrangements for the lodgement and publication of gas licence applications and should now reference only NIAUR.

Options

4.2 Option 1 – do nothing

If the Gas Applications Regulations are not updated, the licence application fees will not reflect the actual cost to NIAUR of administering a licence application and unrecovered costs would have to be borne ultimately by utility consumers.

Also, if the proposed amending regulations are not carried forward, the Gas Applications Regulations will continue to reference the Department which would be inappropriate following the removal of the Department's consenting role in the licence application process; references to "the Director" and to "the Companies (NI) Order 1986" would remain outdated; and a small drafting error which has been identified in Schedule 1 would remain uncorrected. This option is not carried forward.

Option 2 – implement the proposed amending regulations

This option would entail taking forward a number of minor amendments to the Gas Applications Regulations as outlined in Section 3 above. This would revise licence application fees upwards in order to better reflect the actual cost of administering the licence application process; update arrangements for the lodgement and publication of gas licence applications by removing references to the Department; update references to "the Director"; update references to the Companies (NI) Order 1986 to reflect the more recent Companies Act 2006; and tidy up a small drafting error. This option is carried forward.

5. Cost Benefit Analysis

5.1 Benefits

The main benefit of implementing the proposed amendments is that NIAUR should be able to recover more of the actual costs associated with administering the gas licence application process from the applicant company which would lessen the burden on utility consumers.

5.2 Impact Assessments

The Department has carried out an equality screening exercise and has determined that the proposed amending regulations to the Gas Applications Regulations should not have a differential impact on any of the Section 75 categories. The Gas Applications Regulations 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 is an overall benefit to natural gas customers from having a structured and regulated system for gas licence applications in Northern Ireland. Moreover, the proposed increase in gas licence fees is designed to ensure that the fees paid by natural gas companies more closely reflect the cost of administering the licence application process, thus ensuring

that utility consumers are not required to contribute towards meeting any shortfall.

The Department has also carried out a Rural Impact Assessment screening and has determined that the amending regulations should not have any particular negative (or positive) impact on rural areas which mostly lie outside the current natural gas network.

5.3 **Costs**

The fees payable with applications for a gas conveyance, storage or supply licence have not been updated since 1996 and require revision to ensure that they more closely reflect the actual cost of administrating the licence application process. NIAUR has advised that, as the retail price index has increased over 50% since September 1996, the fees currently payable with gas licence applications, or for an extension to an existing licence, do not come close to covering the full administration costs. Having consulted with NIAUR on this issue, the Department therefore proposes to review upwards the fees payable for applications in order to ensure that unrecovered costs do not have to be covered by the general annual licence fee and ultimately, therefore, borne by utility consumers.

The Department proposes that an application fee for a conveyance licence should be increased to £2000 to more accurately reflect the quite significant internal resource required for the processing of these applications. Storage licence applications are similarly quite onerous to process so it is proposed that their fees should also be increased to £2000. Applications for a supply licence or an extension to an existing licence require less internal resource for processing so it is proposed that these fees should be increased by a smaller amount to £750 and £300 respectively. The revised fees have been set at a level which, while better reflecting the actual administration costs involved, should not deter new applications from natural gas companies.

Northern Ireland's new licence fees will be somewhat higher than the current fees charged by Ofgem in Great Britain but should still represent a relatively small outlay for natural gas companies seeking a licence to operate in Northern Ireland.

It should be noted that there will be no direct cost to the Department or NIAUR as a result of the proposed changes and only the relatively small proposed uplift in the licence application fee for an extension to an existing licence will affect gas companies already established in Northern Ireland

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

The Department does not consider that there will be a significant cost impact on the small business sector. The amending Regulations will revise upwards the fees payable with applications to NIAUR for the conveyance, storage and supply of gas. However, these represent a relatively small increase in costs for an energy company wishing to apply for a gas licence in Northern Ireland and should not present a significant difficulty.

7. **Environmental Impact**

Natural gas is the cleanest fossil fuel. As such, these proposed legislative amendments to the Gas Applications Regulations 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**

Compliance with the Gas Applications Regulations, and subsequently with conditions established in any gas licence, is enforced by NIAUR who has the power to impose financial penalties of up to 10% of the turnover of the licensees in the event of a breach.

9. **Monitoring and Review**

The Department, in liaison with NIAUR, will monitor the operation of the amending regulations to assess if this is delivering the anticipated benefits.

10. **Consultation**

The consultation on the proposed amendments to the Gas Applications Regulations may be found on the Department's website at www.energy.detini.gov.uk/consultations. The Department received one substantive response to this consultation which was broadly content with the proposed amendments.

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.

12. **Declaration**

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

[*signed*]

Arlene Foster MLA
Minister for Enterprise, Trade and Investment

24 January 2013