



Gas Storage

Licence Consultation

7th December 2011

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1. Introduction

1.1 Background

The Utility Regulator published a Gas Storage Regulatory Framework Consultation Paper ("[consultation paper](#)") on 22nd July 2009 to provide industry stakeholders with a position on the regulatory framework for gas storage facilities in Northern Ireland. The consultation paper discussed the relevant legislative framework applicable to future gas storage facilities in Northern Ireland and focused on the criteria that the Utility Regulator proposed to apply when determining the Third Party Access (TPA) regime for such facilities.

Since storing gas in a gas storage facility is a licensable activity in Northern Ireland a Concept Gas Storage Licence ("[concept licence](#)") also accompanied the consultation paper. The consultation paper and concept licence received [seven responses](#) from industry.

The Utility Regulator followed the consultation paper with a Gas Storage Regulatory Framework Conclusions Paper ("[conclusions paper](#)") on 31st March 2010 which responded to industry comments and confirmed the criteria that the Utility Regulator would use when determining the TPA regime for a gas storage facility in Northern Ireland.

1.2 Purpose and structure of this paper

The purpose of this Gas Storage Licence Consultation paper is to confirm the detail of the licence conditions that were presented in the concept licence and also to present new conditions that have been developed. As such a final draft licence accompanies this paper (presented as a separate document).

Section 2 of the paper sets out the application process for a gas storage licence and the process required to grant consent to build a gas storage facility.

Section 3 of the paper sets out the next steps required to finalise the gas storage regulatory framework.

Section 4 of the paper sets out the conditions where changes have been made and discusses the rationale for the changes. New conditions are also introduced.

Changes have been made to reflect further development of the licence and to comply with the requirements of Directive 2009/73/EC¹ (“the Directive”). Industry comments on the concept licence that was previously published have also been considered in developing the new draft licence.

Section 5 of the paper discusses the schedules contained in the licence.

Finally the appendix includes the consultation questions.

Areas where the Utility Regulator is keen to receive responses from industry are highlighted with boxed questions throughout the paper.

1.3 Request for comment

The Utility Regulator seeks general comments on the final draft licence and responses to the specific questions contained within this paper.

The Utility Regulator intends to publish all comments received. Any confidential information that respondents wish not to be published must be clearly marked as such.

As a public body and non-ministerial Government department, the Utility Regulator is bound by the Freedom of Information Act (FOIA) which came into full force and effect on 1st January 2005. According to the remit of the Freedom of Information Act, it is possible that certain recorded information contained in consultation responses can be put into the public domain. Hence, it is now possible that all responses made to consultations will be discoverable under FOIA – even if respondents ask the Utility Regulator to treat responses as confidential. It is therefore important that respondents note these developments and in particular, when marking responses as confidential or asking the Utility Regulator to treat responses as confidential, should specify why they consider the information in question to be confidential.

¹ Directive 2009/73/EC concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC

The Utility Regulator invites comment on this consultation paper by close of business on Wednesday 11th January 2012.

Responses, preferably in electronic format, should be returned to:

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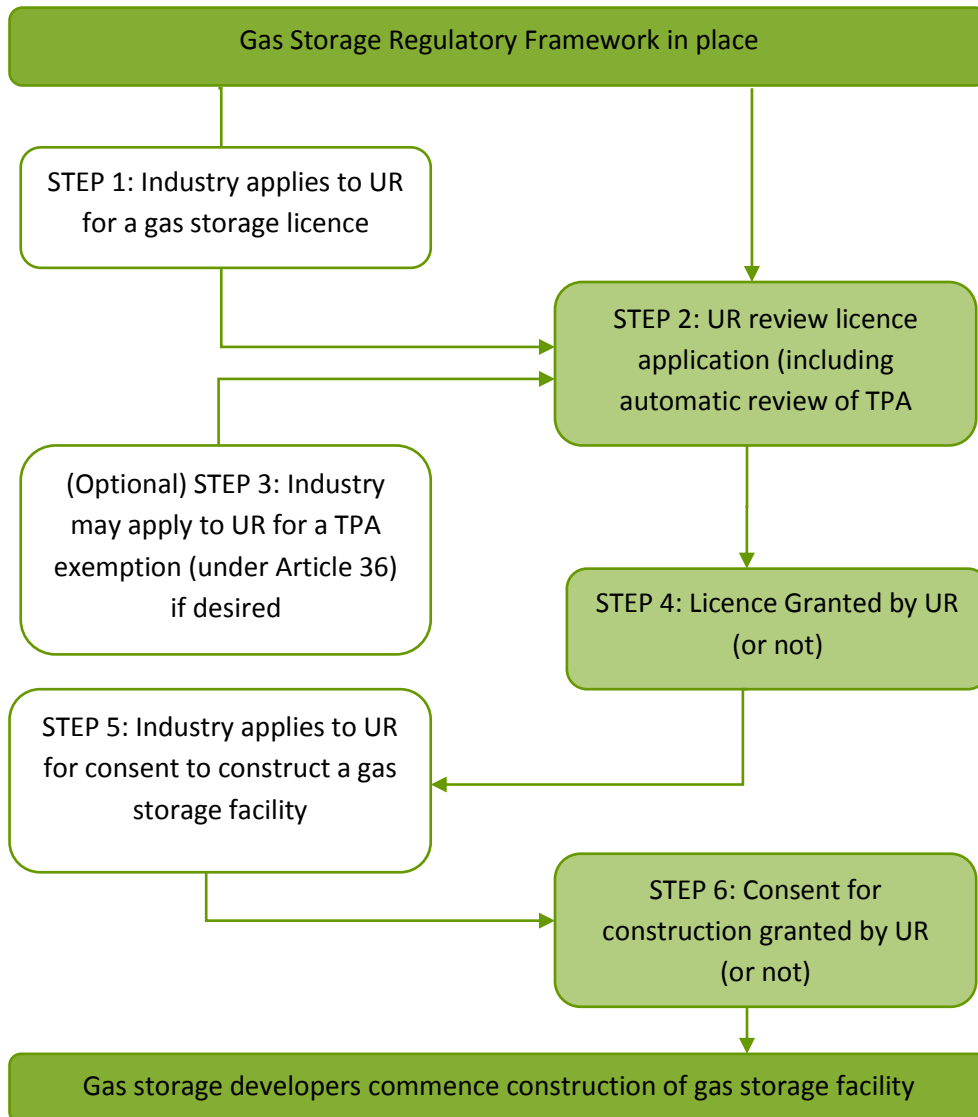
richard.hume@uregni.gov.uk

2. Application process

In order to apply for any gas licence in Northern Ireland it is necessary to meet the requirements set out in the *Gas (Applications for Licences and Extensions) Regulations (Northern Ireland) 1996*². The regulations set out the application process and detail the documents and other particulars that must accompany an application. It is also necessary to apply for consent to construct a gas storage facility.

A step-by-step guide to the application process for both a licence and consent to construct a gas storage facility is presented below. Figure 1 below depicts the process.

Figure 1: Licence application process



² [Gas \(Applications for Licences and Extensions\) Regulations \(Northern Ireland\) 1996](#)

STEP 1: Licence application to the Utility Regulator (UR)

The storage developer applies to Utility Regulator for a gas storage licence. The application should be in the form specified in Schedule 1 of the Gas (Applications for Licences and Extensions) Regulations 1996 No.447.

The application for a gas storage licence should include:

1. Information required under the Gas (Applications for Licences and Extensions) Regulations

Schedule 2 Part II of the regulations sets out the documents required to accompany an application for a gas storage licence. The areas where documentation is required are as follows:

- Financial information
- Constitutional documents
- Expertise of applicant
- Development Plan
- Safety Requirements
- Standard Conditions

2. Supporting information for preferred outcome of Article 33 analysis on TPA regime. This should include the licence applicant's assessment against the criteria that the Utility Regulator has published.

STEP 2: Utility Regulator reviews the licence application

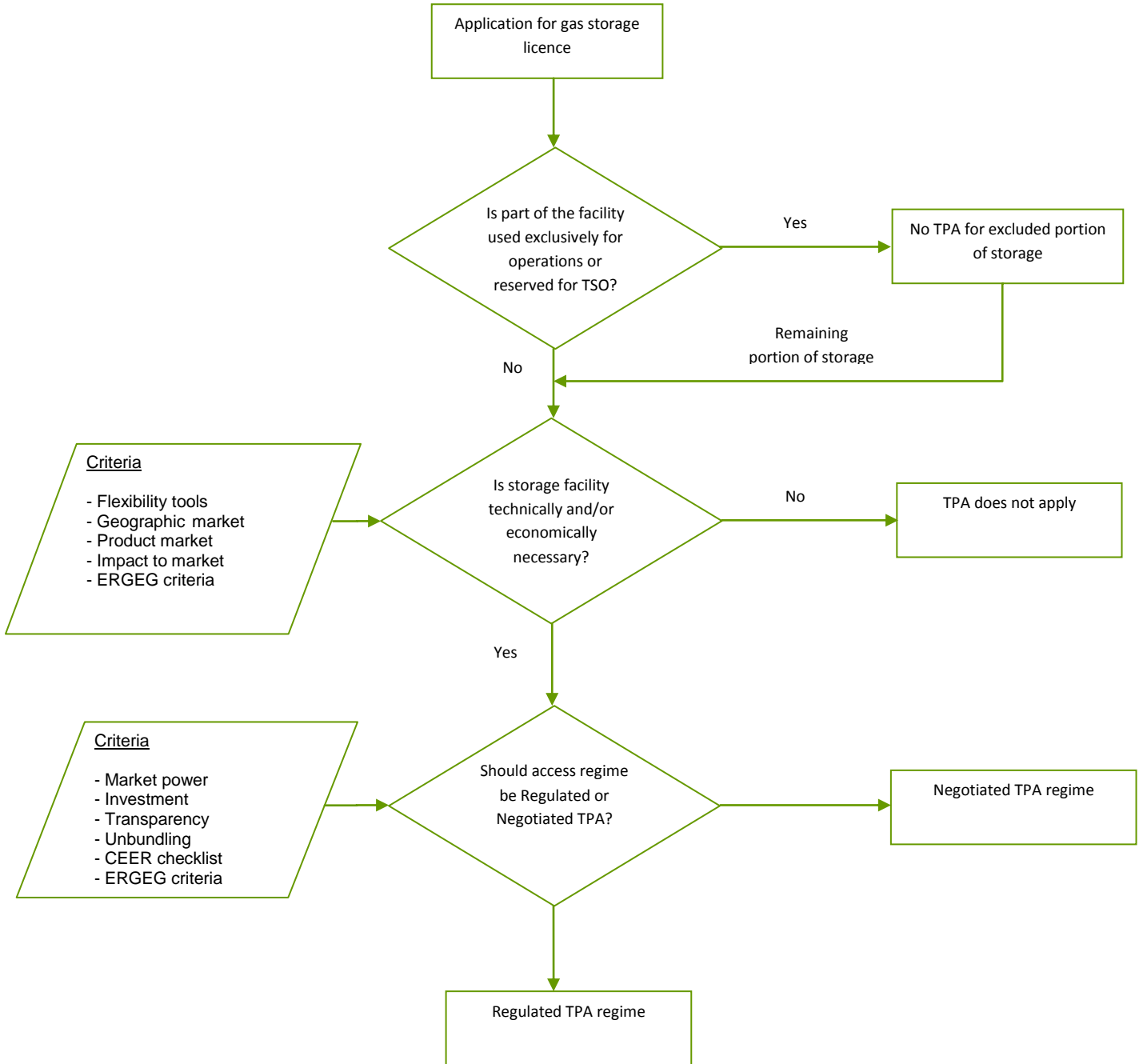
The Utility Regulator reviews the application against the licence application criteria set out in the document: *Criteria for Gas Licence Applications and Applications for Consent to Construct Major Pipelines or Gas Storage Facilities*³.

The application will also determine the appropriate third party access regime and any special conditions that may be included in the licence. It is expected that this process will include a public consultation. Following these processes the Utility Regulator will decide to grant a licence or not.

As a reminder the process that the Utility Regulator will apply to determine the TPA regime is provided in Figure 2 below. This was previously presented in the Gas Storage Regulatory Framework Conclusions paper.

³ [Criteria for Gas Licence Applications](#)

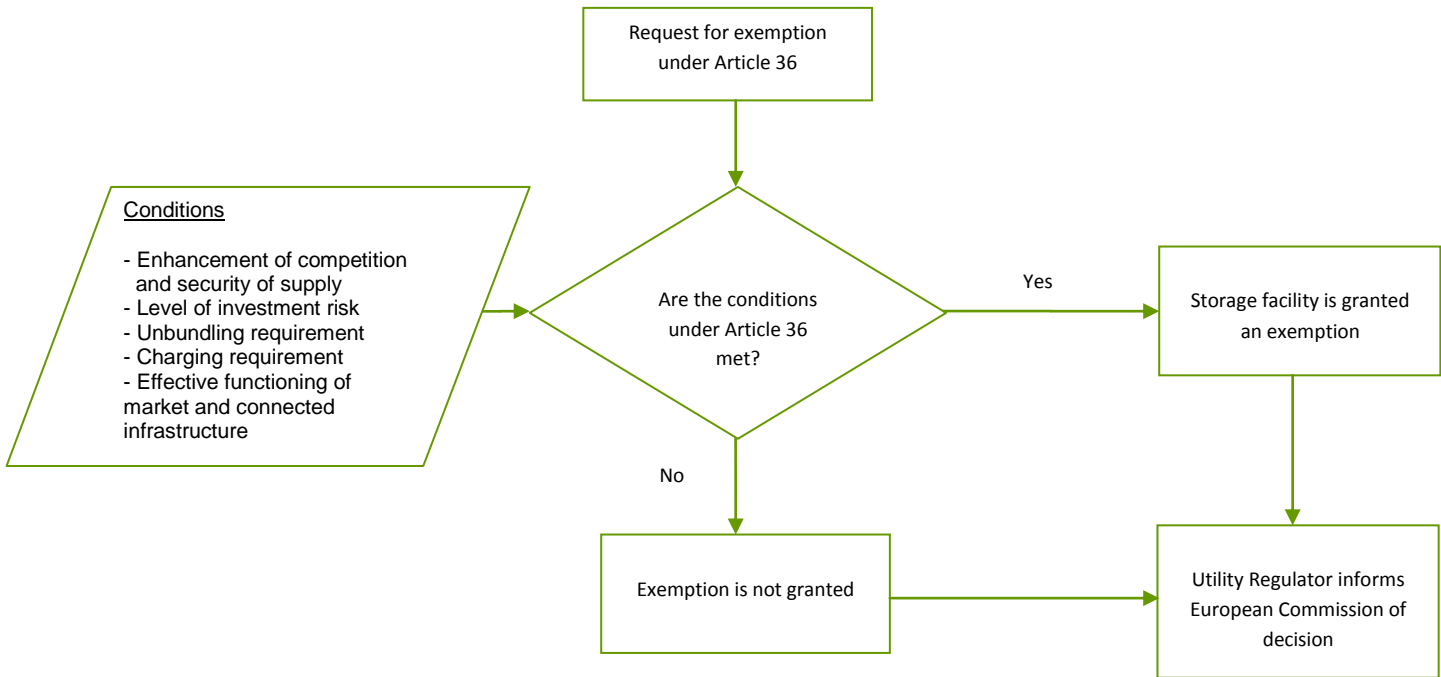
Figure 2: Decision process relating to Article 33



(OPTIONAL) STEP 3: Application for an exemption to TPA

The storage develop may also submit an application for an exemption to TPA under Article 36 of the directive. For example should a licence be granted but the licence applicant is not content with the determined TPA regime the licence applicant will still have the opportunity to apply for an exemption under Article 36. The decision process for an exemption under Article 36 is presented in Figure 3 below. Again this process was previously published in the Gas Storage Regulatory Framework Conclusions Paper.

Figure 3: Decision process relating to Article 36



STEP 4: Utility Regulator grants a storage licence (or not)

Utility Regulator grants a storage licence stating the TPA regime (or not) and any special conditions that may apply. The full licence will be published.

Article 12 of the Directive requires that Member States shall designate, or shall require natural gas undertakings which own storage facilities to designate, one or more storage system operators.

DETI noted in their Decision Paper on the Implementation of the EU Third Internal Energy Package⁴ that the grant of a storage licence under Article 8 of the Gas Order will have the effect of operating as a designation of a storage system operator for the purposes of Article 12 of the Directive. i.e. the licensee will be automatically designated as a storage system operator once the gas storage licence has been granted.

STEP 5: Storage Developer applies to Utility Regulator for consent to construct a gas storage facility

Article 37 of the Gas Order states that any person who executes works for the construction of a gas storage facility without the consent from the Utility Regulator is guilty of an offence.

The Gas Order also states the information that is required with an application. Sub articles 3 and 4 of Article 37, note that the application should specify the location and capacity of the proposed gas storage facility, plus further information as the director of gas may require.

With regards the further information requirement (as the director may require), we expect that a key requirement for consent to construct a gas storage facility will be that a gas storage licence has been granted to the applicant. The application for a gas storage licence requires the licence applicant to submit a significant amount of information and also a significant review by the Utility Regulator. As such we view that this stage (STEP 2 of the process) will form the major assessment. At this stage we do not expect to request any further information. However we will review our position following this consultation.

Therefore the Utility Regulator does not envisage any applications for consent to construct a gas storage facility prior to a gas storage licence being granted.

⁴ [DETI Decision Paper on the Implementation of the EU Third Internal Energy Package, 2011](#)

STEP 6: Utility Regulator provides consent for construction of the facility (or not).

The final step in the process is for the Utility Regulator to grant permission to construct the facility. The storage developer will have completed the application process. The licence holder will now have to comply with the requirements of its licence and provide the relevant information where necessary.

3. Next Steps

The application process for a gas storage licence is set out in section 2. However prior to this process a number of arrangements need to be put in place to finalise the regulatory framework. These next steps are discussed below.

i. Utility Regulator publish final decision paper and gas storage licence

The Utility Regulator intends to reply to the responses to this paper with a final decision paper and final gas storage licence in January 2012.

ii. DETI confirm standard licence conditions

The Gas (Applications for Licences and Extensions) Regulations require that the applicant sets out their proposed arrangements to comply with the standard conditions and any requested modifications to the standard conditions together with the grounds for the modification.

The regulation defines a standard condition as a condition (if any) determined by the Department in accordance with Article 11(1) of the Gas (Northern Ireland) Order. Accordingly Article 11(1) of the Gas Order defines a standard condition as *'such conditions as may be determined by the Department, and published by it in such a manner as it considers appropriate'*.

DETI have not published the standard conditions for a gas storage licence, since the licence conditions have been developed as part of this consultation. However DETI and the Utility Regulator are minded to adopt the approach that all conditions set out in the accompanying draft gas storage licence, except for the conditions contained in Schedule 1, will be adopted as standard licence conditions. i.e. the conditions contained in Parts 1, 2 and 3 will be the standard conditions of the licence.

DETI will be in a position to confirm the standard conditions for a gas storage licence following industry response to this consultation and once the gas storage licence has been finalised by the Utility Regulator (step i above).

iii. DETI update licence application criteria

DETI and the Utility Regulator have also produced a supporting document to Gas (Applications for Licences and Extensions) Regulations: *Criteria for Gas Licence Applications and Applications for Consent to Construct Major Pipelines or Gas Storage Facilities*⁵.

This document sets out the criteria that the Utility Regulator will use to assess the licence application. For the reasons discussed above the relevant sections regarding the standard conditions for a gas storage licence are not complete. This document will be updated following confirmation of the standard licence conditions by DETI.

iv. Utility Regulator ready to accept licence applications

We expect that the final arrangements set out above will be completed in January 2012. The Utility Regulator therefore expects to be in a position to accept applications for gas storage licences by the end of January 2012.

⁵ [Criteria for Gas Licence Applications](#)

4. Standard Conditions for Storage of Gas

This section sets out the licence conditions contained in the draft licence which have materially changed from the previously published concept licence. Some new conditions have also been added.

The Utility Regulator is seeking general views from industry on the content of the licence and requests a response to the specific questions posed. The draft licence is not the final licence and may be amended following comment by industry.

The licence conditions referred to below map directly to the accompanying draft licence. Not all changes are discussed below as some amendments are minor; however all significant changes are marked in red on the draft licence.

Licence Structure

The structure of the licence has changed compared to the concept licence. The draft licence is now structured into the following parts:

- *Grant and Terms of Licence*
- *Part 1: General Conditions Applicable to the Licence Holder*
- *Part 2: Conditions Applicable to the Storage of Gas by the Licence Holder*
- *Part 3: Conditions Relating to Third Party Access*
- *Schedule 1: Storage facility and additional storage facility which the licensee is authorised to operate under the licence*
- *Schedule 2: Right of Authority to revoke licence*

The main structural changes between the concept and the latest draft licence are that Part 3 has been added and Schedule 1 has been updated. These changes are discussed in section 3 and 4 respectively.

1 Grant and Terms of Licence

The gas storage licence is granted for an ongoing period which may be ended either by written notice from the Utility Regulator or if the licence is revoked. We have proposed a written notice period of not less than 25 years which may not be served earlier than 25 years after the licence has been granted. This is a standard approach and the time period is consistent with the duration of gas supply and gas conveyance licences granted in Northern Ireland.

Condition 1.1.6 Definitions

“Storage Facility” – means the gas storage facility set out in Schedule 1 provided that where the Licensee operates more than one storage facility under this licence this term shall be interpreted as referring to each relevant storage facility as the context requires

This condition was updated to allow a single gas storage licence to cover multiple gas storage facilities. The Utility Regulator is of the view that this approach would be more efficient compared to having a separate gas storage licence for each gas storage facility. This approach was welcomed in responses to the consultation paper.

Other definitions have been added which cover the terms: Negotiated Access, Regulated Access, Third Gas Directive and Third Party Access. The definitions for these terms have the same meaning as the terms under the Third Gas Directive (2009/73/EC). This approach was taken for consistency with the Directive.

A number of references in the definitions section have been updated to reflect the fact that the Companies (Northern Ireland) Order 1986 has been repealed by the Companies Act 2006. Where applicable the definitions have been updated to the Companies Act 2006.

However in the case of “Related Undertaking” there is no real equivalent in the Companies Act. The licence as currently drafted defines a related undertaking as any undertaking in which any person has a participating interest as defined in the section 1162 of the Companies Act. This is a provisional definition and we will confirm the definition in the final decision paper.

Condition 1.6.1 Modification of Licence Conditions

This condition has been updated to reflect Regulation 92 of the Gas and Electricity Regulations (Northern Ireland) 2011⁶. Regulation 92 refers to the modification of existing gas licences and provides the Utility Regulator with the power to modify existing licences to ensure that any activity authorised by the licence is carried out in compliance with the relevant requirements of the Gas Directive.

Condition 2.1.2 Licensee to operate an efficient storage facility

This condition has been updated to require the licensee, if requested, to prepare and submit a compliance plan for approval by the Utility Regulator. The compliance plan shall set out the arrangements for ensuring the security, reliability and efficiency of the storage facility. Compliance plans are used elsewhere in the regulated utility industries

⁶ [The Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011](#)

as a tool to ensure that operations are carried out to achievable and acceptable standards.

This condition has been updated to reflect the requirements of Article 41 of the Directive: Duties and powers of the regulatory authority. Article 41, 1(h) requires that the regulatory authority shall monitor compliance with network security and reliability rules and setting or approving standards and requirements for quality of service and supply.

Condition 2.1.3 Capacity Statement

This condition requires that the licensee provides an annual capacity statement detailing relevant gas capacity information for the next gas year.

The intention of the gas storage capacity statement is to provide transparency to the gas industry on the available capacity of the storage facility and to provide any further technical information that may be deemed appropriate.

At this stage we have not detailed what we would require to be contained in the capacity statement. However we intend to prescribe the content prior to when the capacity statement is required. We intend to refer to ERGEG's Guidelines of Good Practice of Storage System Operators (GGPSSO)⁷ which contains recommendations on the publication of the relevant technical and commercial information.

Condition 2.2.2 Independence of Gas Storage Business

This condition has been updated to reflect the requirements of Article 15 of the Directive and the Gas and Electricity Regulations.

Article 15 of the Directive refers to the unbundling of TSOs and storage system operators which are part of a vertically integrated undertaking⁸. The article requires that a TSO, where an independent system operator has been appointed, and a storage system operator which are part of a vertically integrated undertaking shall be independent at least in terms of their legal form and decision making from other activities not relating to transmission, distribution and storage.

⁶ [Amendment of the Guidelines of Good Practice for Third Party Access \(TPA\) for Storage System Operators, July 2011](#)

⁸ The directive defines a 'vertically integrated undertaking' as a natural gas undertaking or a group of natural gas undertakings where the same person or the same persons are entitled, directly or indirectly, to exercise control, and where the undertaking or group of undertakings perform at least one of the functions of transmission, distribution, LNG or storage, and at least one of the functions of production or supply of natural gas;

If the storage system operator is not part of a vertically integrated undertaking then this licence condition does not apply to the licensee.

Amendments have been made to fully reflect the minimum criteria of Article 15(1). The licence now requires that the licensee shall produce a compliance programme which as a minimum contains measures:

- (a) to ensure that the management of the Licensed Business is capable of acting independently;
- (b) to ensure that commercially sensitive information is not disclosed to any party that is part of the same vertically integrated undertaking as the Licensee except where necessary for carrying out a business transaction;
- (c) to monitor conduct and prevent discriminatory conduct;
- (d) establishing the requirements on employees in order to comply with the objectives of the compliance programme.

The licence also requires that the licensee shall submit a report to the Utility Regulator within one month of the twelve month anniversary of the grant of the Licence and every twelve month anniversary thereafter setting out the measures taken by the licensee under the compliance programme during that twelve month period.

The updates discussed above also align with Regulation 15(8) of the Gas and Electricity Regulations (Northern Ireland).

1. Does the proposed licence condition cover the requirements of Article 15 of the Directive?

Condition 2.2.3 Duty to promote effective competition

This condition has been added to meet the requirements of Article 3(1) and Article 16 (3) of the Directive. Article 3(1) requires that Member States shall ensure that natural gas undertakings are operated in accordance with the principles of the Directive with a view to achieving a competitive, secure and environmentally sustainable market in

natural gas, and shall not discriminate between those undertakings as regards their rights or obligations.

Article 16 (3) of the Directive also requires that information necessary for effective competition and the efficient functioning of the market shall be made public. That obligation shall be without prejudice to protecting commercially sensitive information.

Condition 2.2.3 is consistent with the proposal to include a new condition in the conveyance licences contained in the Utility Regulator's EU Third Internal Energy Package (IME3) Implementation Paper⁹.

2. Does the proposed licence condition cover the requirements of Article 3(1) and Article 16(3) of the Directive?

Condition 2.4.5 Licensee to comply with any directions

This condition has been updated so that the licensee shall comply with any directions issued by the Utility Regulator requiring the licensee to secure compliance with the licence, rather than complying with directions relating only to licence condition 2.4.

Condition 2.7.1 Provision of Information requested by other licence or exemption holders

The licence has been updated to include a provision to allow for other gas licence or exemption holders to make reasonable requests for information. This condition has been included to provide transparency for industry. The licensee may however refuse to provide information on the grounds that disclosing such information would seriously and prejudicially affect the commercial interests of the Licensee as stated in Condition 2.7.2.

⁹ [EU Third Internal Energy Package \(IME3\) Implementation Paper, July 2011](#)

Condition 2.7.4 Effective arrangements

The licence has been updated to require the Licensee to provide the Utility Regulator with the effective arrangements 6 months after the granting of the licence. Once the arrangements have been approved by the Utility Regulator the Licensee will be required to comply with the arrangements with regard to any request for information under Condition 2.7.1.

Condition 2.8 Facility Development Plan

This condition has been updated to align with the development plan that is submitted under the Gas Applications Regulations. Under the Gas Applications Regulations, the licence applicant must submit a development plan in respect of the activities which are authorised by the licence. This condition requires that, if there are any proposed changes to the development plan, the licensee provides the Utility Regulator with the details of the changes if requested.

Condition 2.9 Additional Storage Facilities

The draft licence has been updated to allow the Licensee to request that the application of the licence be extended to include additional storage facilities. The approach of having a single licence to cover multiple gas storage facilities was proposed in the previous consultation paper and was viewed by respondents as an efficient method of reducing regulatory burden.

These provisions therefore allow for the Licensee to introduce additional storage facilities for consideration under the existing Licence rather than a Licensee having to apply for a separate licence in relation to each separate storage facility.

Condition 3.1.1 Standard Terms to be provided to the Authority

This condition requires the licensee to provide the Utility Regulator upon request with the standard terms for contracts with third parties. The purpose of this condition is to give the Utility Regulator visibility of terms and conditions that a licensee intends to contract upon.

Condition 3.1.2 Use-it-or-lose-it

A use-it-or-lose-it (UIOLI) condition has been added to place a requirement on the Licensee to include provisions, in each contract with a user of the facility that any unused reserved storage capacity should be offered for use by third parties.

The intention of this condition is to ensure efficient use of the storage facility by obligating the Licensee to offer any unused capacity to a secondary market.

The condition does not contain the detail on how such a UIOLI mechanism would work as the preferred approach is for the licensee to determine the arrangements. However the proposed UIOLI arrangements by the Licensee should consider the recommendations from the GGPSSO.

We have also considered whether it is necessary for the Utility Regulator to approve the UIOLI mechanism that is proposed by the Licensee. There are advantages in reserving such a power as the proposed UIOLI mechanism may be considered ineffective and the Utility Regulator may wish to amend the proposal. As such we are minded to include that the Utility Regulator approves the UIOLI mechanism but are seeking industry comment on this approach.

3. What are respondents' views on the requirement to contain a UIOLI condition within the licence?
4. What are respondents' views on the Utility Regulator approving the UIOLI mechanism?

Conditions deleted from the concept licence

The following conditions have been removed from the concept licence that was previously published:

Compulsory Purchase Powers (Previously Condition 1.11 in the concept licence)

This condition referred to the licensee acquiring land compulsorily for any purpose connected with carrying out the licensee's authorised activities under the gas storage licence. In order to acquire such land, the licensee may have applied to DETI for an order vesting land to the licensee.

However the power of acquiring land compulsorily lies with DETI granting a vesting order. As such the condition has been removed.

Emergencies (Previously condition 2.6 in the concept licence)

This condition proposed creating an obligation in the licence relating to emergency arrangements and/or security of supply. The condition also references the Gas Safety (Management) Regulations (Northern Ireland) (GS(M)R(NI)).

The condition has been removed as we are of the view that its inclusion would merely duplicate the requirements of the (GS(M)R(NI)).

Public Service Obligations (Previously condition 2.10 in the concept licence)

This was a blank entry under the concept licence and has been removed.

5. Licence Schedules

The licence contains two Schedules: Schedule 1 which contains TPA arrangements and special conditions and Schedule 2 which refers to the right of the Utility Regulator Authority to revoke the storage licence.

Schedule 1 is split into two parts: one part for the storage facility which the Licensee is authorised to operate under the licence and the second part for additional facilities which may be added to the same licence.

Each part covers the relevant TPA regime, TPA requirements and special conditions relating to the storage facility or additional facility. The provisions under each are discussed below.

Schedule 1, Part 1 (2) Third Party Access Regime applicable to the Licensee's licensed storage business

The relevant TPA regime applicable to the storage facility as determined by the Utility Regulator will be set out in Schedule 1, Part 1(2) of the licence. As discussed in the previous conclusions paper the Utility Regulator will determine the appropriate TPA regime by judging against the published criteria. This reflects the requirements of Article 33 of the directive.

There are three possible outcomes following analysis, required under Article 33, which could apply to the storage facility:

- i. Negotiated TPA applies
- ii. Regulated TPA applies
- iii. TPA does not apply

Additionally the storage developer may have been granted an exemption from TPA requirements under Article 36 of the Directive. Schedule 1, Part 1 (2) of the draft licence has been updated to cater for such an exemption.

Schedule 1, Part 1 (3) Third Party Access Requirements

The TPA regime applicable to the storage facility will be stated in Schedule 1, Part 1(3) which will determine the conditions that apply. If, following analysis, the Utility Regulator determines that TPA does not apply then these conditions will not apply. The terms and conditions are discussed below.

Negotiated Access

Provisions set out under this condition relate to a negotiated TPA regime if deemed applicable. The conditions are set out below:

(a) Terms and Conditions

Article 33 (3) of the Directive states that, under a negotiated TPA regime, regulatory authorities shall require that Storage System Operators (SSOs) publish their main commercial conditions for the use of storage, linepack and other ancillary services on an annual basis. Condition (a) reflects this requirement by stating that the Licensee publishes the “*principal commercial terms of use of and access to the Storage Facility for all third parties on an annual basis*”.

Condition (a) differs from the terms and conditions under regulated access where the Licensee is required to publish “*all commercial terms relating to the use of and access to the Storage Facility for all third parties on an annual basis*”.

The licence also requires that the licensee shall consult with system users when developing the main commercial conditions for use of the storage facility.

(b) Storage Charges

Article 33 (3) of the Directive states that parties shall be obliged to negotiate access to storage, linepack and other ancillary services in good faith. Condition (b) reflects this requirement and also gives provision to the Utility Regulator to request an audit of the storage charges made to all third party users of the storage facility. In response to such a request the Licensee is required to provide to the Utility Regulator a report containing details of all tariff and charges relating to the storage facility and an explanation of the factors justifying the tariffs and storage charges offered including details of the Licensee’s costs in providing storage capacity to third parties.

(c) Authority’s Right of Audit

This condition also entitles the Utility Regulator to reasonably request to audit all other aspects of the TPA afforded to all third parties by the Licensee in order to ensure compliance with legislation and with the terms of this licence.

Regulated Access

Provisions set out under this condition relate to a regulated TPA regime if deemed applicable. The conditions are set out below:

(a) Terms and Conditions

As referred to above the Licensee under a regulated TPA regime is required to publish all commercial terms relating to the use of and access to the storage facility for all third parties on an annual basis. The Licensee is required to enter into any TPA arrangement with third parties on the published terms. This condition reflects the tighter requirements of a regulated TPA regime compared to the conditions imposed under a negotiated TPA regime.

(b) Storage Charges

The Licensee is required to publish all tariffs applicable in respect of TPA to the storage facility on an annual basis. The licensee must submit to the Utility Regulator for approval no later than 30 November the following information on an annual basis:

- i. The proposed tariffs for the 12 month period commencing on 1 January next following; and
- ii. An explanation of the factors justifying the proposed tariffs including (without limitation) details of the Licensee's costs in providing storage capacity to third parties.

The Utility regulator may also reasonably request for further information in order to properly audit the proposed tariffs. Once the Utility Regulator has approved the tariffs the licensee may publish the tariffs and the tariffs will be applied to all third party use of the facility.

(c) Authority's Right of Audit

This condition is identical to the equivalent condition under negotiated TPA.

No Third Party Access Regime applies pursuant to Article 33

Where the Utility Regulator has decided that TPA does not apply pursuant to Article 33 then 'No Third Party Access Regime applies' will be inserted into the schedule.

No Third Party Access Regime applies pursuant to Article 36

Where the Utility Regulator has decided that an exemption should be granted for a prescribed period of time under Article 36 of the directive then no TPA shall apply for the duration of the prescribed period.

The licence also allows the Utility Regulator to review the TPA arrangements in accordance with Article 33 and to determine the most appropriate TPA regime, once the period of exemption under Article 36 has expired.

Schedule 1, Part 1 (4) Special Conditions applicable to the Licensee's storage facility

This provision has been added to allow the Utility Regulator to add conditions on a case by case basis where in our opinion such conditions are necessary to protect the interest of consumers.

The following special condition is proposed:

Directions by the Authority

This condition has been included so that the Utility Regulator may, on a case-by-case basis, make directions in relation to all contract conditions and in particular those relevant to TPA. For example this condition could be applied to the terms and conditions under Negotiated and Regulated Access and the storage charges under Regulated access.

Additionally the situation may occur where TPA does not apply (i.e. it is not technically and/or economically necessary or exempt). In this event the Licensee may contract with a third party and the Utility Regulator, under condition 3.1.1 Standard Terms to be provided to Authority, may be provided with the standard terms for contracts. Under this special condition the Utility Regulator could be able to make directions to the terms of the contract.

The ability to direct terms and conditions within a contract may be viewed as over regulation especially if the Utility Regulator has judged that TPA does not apply. However there are benefits of having this provision. For example, third parties who use the facility may find that contracts with the facility are restrictive and may wish to ask the Utility Regulator to make changes.

The approach we have adopted is to add the provision to direct contract conditions as a special condition in the Schedule. This provides the flexibility to use this provision on a case-by-case basis. We are seeking industry views on whether it is appropriate for the Utility Regulator to apply this condition, especially if the Utility Regulator has assessed that TPA does not apply under Article 33.

5. Where TPA does not apply, does the Utility Regulator need the authority to make directions to the terms of contract between the storage system operator and a third party?

Schedule 1, Part 2 Additional Storage Facility which the Licensee is authorised to operate under the Licence

Schedule 1 has also been amended to cater for more than one storage facility. It could be possible that storage facilities operating under the same licence have different TPA regimes and special conditions as determined by the Utility Regulator. This amendment to the schedule provides flexibility for such circumstances.

Appendix A: List of Consultation questions

Independence of Gas Storage Business

1. Does the proposed licence condition cover the requirements of Article 15 of the Directive?

Duty to promote effective competition

2. Does the proposed licence condition cover the requirements of Article 3(1) and Article 16(3) of the Directive?

UIOLI

3. What are respondents' views on the requirement to contain a UIOLI condition within the licence?
4. What are respondents' views on the Utility Regulator approving the UIOLI mechanism?

Third Party Access

5. Where TPA does not apply, does the Utility Regulator need the authority to make directions to the terms of contract between the storage system operator and a third party?

General

6. Do respondents have any further general comments on the draft gas storage licence or on the specific licence conditions?