
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 2(2) of the European Communities Act 1972. They make amendments to the electricity and gas regulatory regimes in Great Britain in order to implement, and address matters arising out of or related to, the requirements of a package of European energy measures collectively referred to as the “Third Package”.

The Third Package comprises Directive [2009/72/EC](#) of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity repealing Directive [2003/54/EC](#) (“the Electricity Directive”); Directive [2009/73/EC](#) of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive [2003/55/EC](#) (“the Gas Directive”); Regulation [2009/713/EC](#) of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators (“the Agency Regulation”); Regulation [2009/714/EC](#) of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation [2003/1228/EC](#) (“the Electricity Regulation”); and Regulation [2009/715/EC](#) of the European Parliament and of the Council of 13 July 2009 concerning conditions for access to the natural gas transmission networks and repealing Regulation [2005/1775/EC](#) (“the Gas Regulation”) (as amended by Commission Decision 2010/685/EU of 10 November 2010 amending Chapter 3 of Annex I to Regulation [2009/715/EC](#) of the European Parliament and of the Council on conditions for access to the natural gas transmission networks).

These Regulations also provide for the enforcement, by the Gas and Electricity Markets Authority (“the Authority”), of certain provisions of Commission Regulation 2010/838/EU of 23 September 2010 on laying down guidelines relating to the inter-transmission system operator compensation mechanism and a common regulatory approach to transmission charging.

In Part 1, regulation 1 covers the citation, commencement and extent of the Regulations. With the exception of the provision in Regulation 3 described below, the Regulations do not extend to Northern Ireland. Regulation 2 contains the interpretation provision for the Regulations.

In Part 2, regulation 3 inserts new section 19A into the Consumers, Estate Agents and Redress Act 2007, which requires the National Consumer Council to prepare and publish guidance for energy consumers, and a summary of that guidance, addressing the matters in the energy consumer checklist published by the European Commission in accordance with the Gas and Electricity Directives.

In Part 3, regulation 4 inserts new sections 8C to 8Q into the Gas Act 1986 (“the 1986 Act”) introducing a new scheme for the certification of the independence of persons who are gas transmission system operators within the meaning of the Gas Directive. Regulation 5 inserts new sections 10A to 10O into the Electricity Act 1989 (“the 1989 Act”) to make equivalent provision in accordance with the Electricity Directive.

New section 8C of the 1986 Act requires any licensed gas transporter who carries out the activity of transmission of gas or any person who participates in the operation of a gas interconnector, to be certified by the Authority. New section 10A of the 1989 Act requires this where any person holds an electricity transmission licence or participates in the operation of an electricity interconnector.

New sections 8D to 8N of the 1986 Act, and new sections 10B to 10L of the 1989 Act, make provision regarding the procedure in connection with applications. This includes particular reporting requirements in respect of security of gas supplies in the United Kingdom and the European Economic Area (“EEA”) where a person connected with a country outside the EEA applies for

certification after 3 March 2013. The Authority's preliminary certification decision must be notified to the European Commission. The Gas Regulation and Electricity Regulation ("the EU Regulations") require that the Authority's final decision (which is taken under Article 3(2) of the EU Regulations) must take utmost account of the European Commission's opinion as to whether certification would be compatible with the Gas Directive, or the Electricity Directive, as applicable.

New section 8G of the 1986 Act identifies the grounds on which a person may be certified, namely that the person complies with section 8H (applicant is ownership unbundled), Article 9(9) of the Gas Directive (alternative arrangements ensure the independence of the applicant), Article 14 of the Gas Directive (applicant has nominated an independent system operator for designation), Chapter 4 of the Gas Directive (applicant is an independent transmission operator) or on the basis that the person benefits from an exemption granted in accordance with Article 36 of the Gas Directive or is in an equivalent position. New section 10E of the 1989 Act makes equivalent provision with respect to compliance with the Electricity Directive except that it does not permit certification on the ground that the applicant is an independent transmission operator.

New section 8J of the 1986 Act, and new section 10H of the 1989 Act, designate as a transmission system operator for the purposes of the Gas Directive or the Electricity Directive (as applicable) any person certified under new section 8G of the 1986 Act or section 10E of the 1989 Act, unless certification was granted on the basis that an independent system operator has been nominated. In that case, the independent system operator is designated for this purpose.

New sections 8O and 8P of the 1986 Act, and sections 10M and 10N of the 1989 Act, prohibit the exercise of shareholder rights and rights of appointment in specified cases and make these voidable on an application to the court.

In Part 4, Regulations 6 to 15 make amendments to the 1986 Act relating to the operation of gas storage facilities and LNG import or export facilities ("LNG facilities").

Regulation 6 inserts new section 8R, which imposes requirements relating to independence on the owners of gas storage facilities. Regulation 6 also inserts new section 8S, which enables the Authority to grant exemptions from new section 8R, and from section 19B, in relation to minor gas storage facilities.

Regulation 7 inserts new sections 11A to 11C. New sections 11A and 11C impose new duties on owners of gas storage and LNG facilities regarding the operation of such facilities and the treatment of information. New section 11B replicates the duties of owners of LNG facilities regarding the provision of information to the Authority previously imposed by section 19DA and repeals that section.

Regulation 8 amends section 19A (exemptions in respect of gas storage facilities) to require the Authority to comply with additional procedural requirements granting an exemption under that section, including a requirement to impose conditions regarding the use of exempt facilities, and to repeal the giving of exemptions in respect of minor facilities (now provided for by new section 8S). Regulation 9 inserts new section 19AA which imposes new procedural requirements relating to review by the European Commission of exemptions given under section 19A and the modification and revocation of such exemptions.

Regulation 10 amends section 19B (third party access to gas storage facilities) to require owners of gas storage facilities to consult when preparing the main commercial conditions relating to the use of their facility.

Regulation 11 amends section 19C (exemptions in respect of LNG facilities) and regulation 12 inserts new section 19CA in line with the amendments made by regulations 9 and 10 in respect of gas storage facilities, with the exception of the amendment in regulation 8 in respect of minor facility exemptions, as such exemptions are not available in respect of LNG facilities.

Regulation 13 amends section 19D (third party access to LNG facilities) to address, in particular, matters arising from the insertion of new section 19DZA (take or pay exemptions for LNG facilities).

Regulation 14 inserts new section 19DZA which enables the Authority to grant exemptions from section 19D where granting third party access to an LNG facility would cause the owner significant difficulties because of take-or-pay commitments under one or more gas-purchase contracts.

Regulation 15 inserts new section 19DB (capacity allocation in exempt gas storage and LNG facilities), which requires applications for an exemption under section 19A or 19C to specify criteria relating to the use of the gas storage or LNG facilities by others and prevents the Authority from giving such an exemption if the criteria do not satisfy the conditions listed in section 19DB.

Regulation 16 repeals sections 17C to 17E of the Petroleum Act 1998 (“the 1998 Act”), relating to the use of offshore gas storage facilities and exemptions from the requirement to give access to those facilities, due to the extension (by virtue of regulation 48) of the regime in the 1986 Act to gas storage facilities located offshore, i.e. in the territorial sea adjacent to Great Britain and the sea in any area designated under section 1(7) of the Continental Shelf Act 1964. It also makes consequential amendments to section 17H of the 1998 Act (enforcement of certain duties in relation to access to pipelines and offshore gas storage facilities).

Regulation 17 makes transitional provision in relation to exemptions in respect of gas storage and LNG facilities granted under provisions repealed by these Regulations.

In Part 5, regulation 18 amends section 7 of the 1986 Act to restrict the granting of a gas transporter licence to a person who is a gas producer. Regulation 19 amends section 6 of the 1989 Act to prevent the same person holding both an electricity distribution licence and an electricity generation or supply licence.

In Part 6, regulation 20 makes amendments to the 1986 Act, and regulation 21 makes amendments to the 1989 Act, in order to impose new duties on persons exempt from the need for a gas transporter licence or gas supply licence, and persons exempt from the need for a distribution licence or electricity supply licence, respectively.

Regulation 20(2) inserts new sections 6B and 6C into the 1986 Act, which introduce new Schedules 2AA and 2AB respectively, to that Act. Regulation 21(2) inserts new sections 5A and 5B into the 1989 Act, which introduce new Schedules 2ZA and 2ZB respectively, to that Act.

New Schedule 2AA to the 1986 Act and new Schedule 2ZA to the 1989 Act impose new duties on persons who are exempt from the requirement to hold a gas transporter licence, or an electricity distribution licence, respectively. These include a duty to give third party suppliers access to licence-exempt networks in order to enable customers connected to those networks to switch supplier; arrangements for connection in the context of the provision of such access; a duty to submit methodologies for use of system charges to the Authority for approval; requirements relating to the preparation and separation of distribution accounts; and provisions relating to closed distribution systems.

New Schedule 2AB to the 1986 Act and new Schedule 2ZB to the 1989 Act impose new duties on persons exempt from the need for a gas or electricity supply licence, respectively. These include a duty to enable customers, free of charge, to switch suppliers within three weeks (unless the customer requests otherwise or conditions in the contract with the existing supplier prevent this) and duties regarding the conditions of customer contracts and the provision of the energy consumer guidance (published under new section 19A of the Consumers, Estate Agents and Redress Act 2007 inserted by regulation 3) and other information to customers. The Schedules also provide for the Authority to resolve disputes relating to obligations in the Schedules.

Part 7 of the Regulations makes amendments to the 1986 and 1989 Acts and to the Utilities Act 2000 (“the 2000 Act”) relating to the designation, independence, objectives, powers and duties of the regulatory authority for Great Britain.

Regulation 22 inserts new section 3A into the 2000 Act in order to designate the Authority as the regulatory authority for Great Britain for the purposes of the Third Package and insert independence requirements in respect of the Authority’s staff in the context of that role. It also imposes duties on

the Authority to keep the regulatory authority for Northern Ireland informed, and to have regard to its representations, in relation to meetings and decisions of the Agency for the Cooperation of Energy Regulators (“the Agency”), if a representative of the Authority is appointed as the United Kingdom representative on the Board of Regulators of the Agency, under the Agency Regulation.

Regulation 23 inserts new section 5ZA into the 2000 Act, which requires the Authority to prepare and publish an annual report on the activities it has carried out in the preceding 12 months as designated regulatory authority for Great Britain.

Regulation 24 makes amendments to Schedule 1 to the 2000 Act in order to impose independence requirements in respect of the Authority’s board members (of a nature similar to those relating to staff members contained in new section 3A), and to amend the provisions setting out the rules for the appointment and removal of the Authority’s board members.

Regulation 25 inserts new definitions into section 106(1) of the 2000 Act, which relate to the amendments made by regulations 22 to 24.

Regulations 26 and 27 make amendments to section 4AA(1A) of the 1986 Act and of section 3A(1A) of the 1989 Act respectively, in order to specify that, when the Authority is carrying out its functions as regulatory authority for Great Britain, its principal objective of protecting the interests of existing and future consumers includes the interests of those consumers in the Authority’s fulfilment of particular objectives, set out in the Electricity and Gas Directives.

Regulations 28 and 29 make amendments to sections 27B to 27D of the 1986 Act and sections 44B to 44D of the 1989 Act respectively, in order to extend and rename the dispute resolution procedure put in place by the Gas and Electricity (Dispute Resolution) Regulations 2009 (S.I. 2009/1349). The combined effect of the amendments is that, in addition to the categories of disputes currently covered, the procedure will cover disputes arising from written complaints against persons exempt from the need for a distribution licence, owners of gas storage facilities, owners of LNG import or export facilities and independent system operators. (Disputes arising from written complaints against independent gas transmission operators will be covered by the reference in section 27B(1)(a)(i) to complaints made against gas transporters.) In order to update the title of the procedures to reflect references in the Gas and Electricity Directives, references in the 1986 Act to an “Article 25 dispute” become references to an “Article 41 dispute”, and references in the 1989 Act to an “Article 23 dispute” become references to an “Article 37 dispute”.

Regulations 30 and 31 make amendments to sections 34 and 47 of the 1986 and 1989 Acts (general functions) respectively. They also insert new sections 34A and 47A into the 1986 and 1989 Acts respectively, in order to impose new monitoring duties on the Authority, when the Authority is carrying out its functions as regulatory authority for Great Britain, and to ensure that the Authority has the necessary information gathering powers in relation to those duties. By virtue of new sections 34A(4) and 47A(4), the enforcement provisions contained in sections 28 to 30 of the 1986 Act, and sections 25 to 27 of the 1989 Act respectively, have effect in relation to information gathering notices served by the Authority under new sections 34A(2) and 47A(2). New sections 34A(5) and 47A(5) of the 1986 and 1989 Acts respectively contain a new criminal offence (triable either summarily or on indictment) of intentionally altering, suppressing or destroying any document or record of information requested by the Authority under an information gathering notice served under the powers mentioned above.

Regulations 32 and 33 insert new sections 4C and 3E into the 1986 and 1989 Acts respectively, for the purpose of imposing a duty on the Authority to carry out its functions under Part 1 of those Acts in a manner that it considers is best calculated to ensure compliance with any binding decisions of the Agency or European Commission under the Third Package.

Regulations 34 and 35 insert new sections 4D and 3F into the 1986 and 1989 Acts respectively, for the purpose of imposing new duties on the Authority to consult and cooperate with the Agency and the designated regulatory authorities of other Member States; provide the Agency with information;

and consult specified national authorities, when carrying out its functions as regulatory authority for Great Britain.

Regulation 36 makes an amendment to section 105 (general restrictions on disclosure of information) of, and inserts new section 105A into, the 2000 Act. This has the combined effect of imposing a new duty of confidentiality on the Authority in respect of any information provided to it by the regulatory authority of another Member State or of Northern Ireland, and describing the relationship between that new duty and the general restrictions under section 105.

In Part 8, regulations 37 to 40 make amendments to the 1986 and 1989 Acts, and to the Electricity and Gas (Determination of Penalties) Order 2002 (S.I. 2002/1111) (“the 2002 Order”) for the purpose of enabling the Authority to enforce requirements under certain provisions (“relevant requirements”) against regulated persons through civil proceedings under sections 28 to 30 of the 1986 Act and sections 25 to 27 of the 1989 Act. Regulation 37 inserts a definition of a regulated person for gas purposes in, and inserts the Schedule at Schedule 3 (which sets out the obligations enforceable as relevant requirements) into, the 1986 Act. Regulation 38 makes saving provision in respect of proceedings commenced under section 22 of the 1986 Act prior to the entry into force of these Regulations. Regulation 39 inserts a definition of a regulated person for electricity purposes in, and inserts the Schedule at Schedule 4 (which sets out the obligations enforceable as relevant requirements) into, the 1989 Act. Regulation 40 amends the 2002 Order in order to ensure that the provisions contained in the Order extend to all persons covered by the enforcement regimes in the 1986 and 1989 Acts, as amended by the Regulations.

Part 9 of the Regulations amends the existing powers of the Authority to modify the licence conditions of gas and electricity licensees. The Regulations replace the existing powers and procedures in the 1986 and 1989 Acts, and provide a right of appeal for specified parties to appeal to the Competition Commission following a decision by the Authority to modify the conditions of a gas or electricity licence.

Regulation 41(3) to (5) modifies section 23 of the 1986 Act (modification of conditions of licences). In particular, the Authority may modify the standard and special conditions of a gas licence issued under section 7, 7ZA or 7A(1) or (2) of that Act, including by making consequential amendments to any such licence, following consultation on the proposed amendments, and having considered any responses to that consultation duly made.

Regulation 41(6) inserts a new section 23A into the 1986 Act, making supplementary provision to section 23. In particular, where a standard condition is modified, the Authority is under a duty to make, and publish, that modification in the standard conditions of future licences. Such modifications have effect subject to the giving of a direction by the Competition Commission under paragraph 2 of new Schedule 4A to the Act (directing the suspension of a modification decision by the Authority pending the determination of an appeal in relation to that modification decision).

Regulation 41(7) inserts new sections 23B to 23G, into the 1986 Act. These sections specify the procedure for parties to appeal to the Competition Commission against a decision of the Authority to amend the conditions of a licence under section 23.

Regulation 41(8) inserts new Schedule 4A into the 1986 Act (procedure on appeal under section 23B). Schedule 5 of the Regulations incorporates this new Schedule. Schedule 4A provides the procedure for making an application for permission to appeal, including the process for any application for the suspension of a decision to modify licence conditions prior to the determination of an appeal, and the powers of the Competition Commission, including powers to require evidence under oath and require the production of specified documentation.

Regulation 41(9) repeals sections 24 to 26A of the 1986 Act (powers available on a reference to the Competition Commission).

Regulation 42 makes transitional provision in relation to existing references, consultation commenced by the Authority under section 23 of the 1986 Act and membership of the Competition Commission in relation to such references.

Regulation 43(2) repeals section 11 of the 1989 Act (modification by agreement).

Regulation 43(4) to (6) amends section 11A of the 1989 Act (modification of conditions of licences). In particular, the Authority may modify the standard and special conditions of an electricity licence issued under section 6 of that Act, including by making consequential amendments to any such licence, following consultation on the proposed amendments, and having considered any responses to that consultation duly made.

Regulation 43(7) inserts new section 11B into the 1989 Act, making supplementary provision to section 11A. In particular, where a standard condition is modified, the Authority is under a duty to make and publish that modification in the standard conditions of future licences. Such modifications have effect subject to the giving of the direction by the Competition Commission under paragraph 2 of new Schedule 5A to the Act (directing the suspension of a modification decision by the Authority pending the determination of an appeal in relation to that modification decision).

Regulation 43(8) inserts new sections 11C to 11H, into the 1989 Act. These sections specify the procedure for parties to appeal to the Competition Commission against a decision of the Authority to amend the conditions of a licence under section 11A of the Act.

Regulation 43(9) inserts the new Schedule 5A (procedure on appeal under section 11C) into the 1989 Act. Schedule 6 of the Regulations incorporates this new Schedule. Schedule 5A provides the procedure for making an application for permission to appeal, including any application for the suspension of a decision to modify licence conditions prior to the determination of an appeal, and the powers of the Competition Commission, including powers to require evidence under oath and require the production of specified documentation.

Regulation 43(10) repeals sections 12 to 14A of the 1989 Act (powers available on a reference to the Competition Commission).

Regulation 44 makes transitional provision in relation to modification of licence conditions, and references to the Competition Commission under the 1989 Act and Competition Commission membership on such references.

Regulation 45 makes minor and consequential amendments arising from Part 9 of these Regulations.

In Part 10, Regulations 46 to 48 insert new definitions into the 1986 and 1989 Acts. The terms defined relate to the amendments to the Acts made by Parts 2 to 9. The amendments to the 1986 Act include, in particular, amendments which ensure that the requirements in that Act apply to any gas storage and LNG facilities located offshore.

Regulations 49 and 50 give effect to Schedules 7 and 8 respectively, and amend sections 33 and 81 of the 2000 Act, and sections 137, 146 and 150 of the Energy Act 2004. The amendments ensure that the standard conditions of gas and electricity licences, amended by Schedules 7 and 8 respectively, continue to have effect, in modified form, as standard conditions in relation to licences granted under the 1986 and 1989 Acts.

Regulation 51 requires the Secretary of State to review the operation and effect of these Regulations and lay a report before Parliament within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

An impact assessment relating to the changes made by the Regulations, and supplementary impact assessments relating specifically to the provisions contained in Parts 6 and 9 of the Regulations, are available. A transposition note setting out how the main elements of the Third Package are transposed, into the law of Great Britain is also available. These documents can be obtained from the Energy Regulatory Framework Team, Department of Energy and Climate Change, 3 Whitehall Place, London SW1A 2AW. Copies of the regulatory impact assessments and the transposition note have been placed in the libraries of both Houses of Parliament.