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STATUTORY INSTRUMENTS

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**2009 No. 1349**

**The Gas and Electricity (Dispute Resolution) Regulations 2009**

**Article 23 Disputes (amendment of the Electricity Act 1989)**

3. After section 44A of the Electricity Act 1989(1) insert—

*“Article 23 Disputes*

**44B Meaning of “Article 23 dispute”**

- (1) For the purposes of sections 44C and 44D a dispute is an “Article 23 dispute” if—
- (a) it is wholly or mainly a dispute with respect to an issue mentioned in paragraph 1, 2 or 4 of Article 23 of the 2003 Directive; and
  - (b) it arises from a written complaint made against the holder of—
    - (i) a transmission licence,
    - (ii) a distribution licence, or
    - (iii) an interconnector licence,and is a dispute between the complainant and the person complained against.
- (2) The reference in subsection (1)(b) to a complaint does not include a reference to—
- (a) a complaint about a modification (or failure to make a modification) of—
    - (i) a term or condition of the licence held by the person complained against, or
    - (ii) an obligation or right contained in any code or other document and having effect by virtue of such a term or condition; or
  - (b) a complaint made by a person as a household customer or potential household customer.
- (3) In this section—
- “the 2003 Directive” means Directive [2003/54/EC](#) of the European Parliament and of the Council concerning common rules for the internal market in electricity;
- “household customer” has the meaning given by Article 2(10) of the 2003 Directive.

**44C Determination of disputes**

- (1) An Article 23 dispute (other than one which may be referred to the Authority under or by virtue of any other provision of this Act) may be referred to the Authority under this section by the person who is the complainant in relation to the dispute.
- (2) An Article 23 dispute referred to the Authority under this section shall be determined by order made either by the Authority or, if the Authority thinks fit, by an arbitrator (or in Scotland an arbiter) appointed by the Authority.

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(1) [1989 c.29](#). Section 44A is inserted by section 23 of the Competition and Service (Utilities) Act [1992 \(c.43\)](#), which is not yet in force.

(3) The practice and procedure to be followed in connection with an Article 23 dispute referred to the Authority under this section shall be such as the Authority may consider appropriate.

(4) An order under this section—

(a) may include such incidental, supplemental and consequential provision as the person making the order considers appropriate; and

(b) shall be final.

(5) The provision that may be included in an order under this section by virtue of subsection (4)(a) above includes provision requiring either party to pay a sum in respect of the costs or expenses incurred by the person making the order (“costs provision”).

(6) In including costs provision in an order under this section, the person making the order shall have regard to the conduct and means of the parties and any other relevant circumstances.

(7) Costs provision included in an order under this section shall be enforceable—

(a) in England and Wales, as if it were a judgment of the county court;

(b) in Scotland, as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff.

(8) Sections 25 to 28 shall have effect as if references in those sections to a relevant requirement (other than the reference in section 25(8)) included references to any duty or other requirement imposed on the holder of a licence mentioned in section 44B(1)(b) by an order under this section.

#### **44D Time limit for determinations**

(1) An order determining an Article 23 dispute (whether made under section 44C or made under or by virtue of any other provision of this Act) shall be made within the permitted period.

(2) Subject to subsection (3) and (5), the permitted period is the period of two months beginning with the day on which the dispute is referred to the Authority.

(3) Where the person determining the dispute requests further information from anyone for the purposes of determining the dispute, the person may, by giving notice to the parties, extend the permitted period—

(a) by two months, or

(b) with the agreement of the complainant, by a longer period.

(4) Subsection (5) applies to a dispute that relates to connection charges for a generating station, or an extension of a generating station, where the station or extension—

(a) is being used for the first time, and

(b) is of a capacity not less than 100 megawatts.

(5) The person determining a dispute to which this subsection applies—

(a) may by giving notice to the parties specify a permitted period that is longer than two months;

(b) may extend the period specified under paragraph (a), or the period as extended under this paragraph, by giving further notice to the parties.

(6) If a person refers a dispute to the Authority, or purports to do so, and the Authority gives to that person a notice—

- (a) specifying information which it requires in order to assess whether the dispute is an Article 23 dispute, or whether there is a dispute at all, and
  - (b) requesting the person to provide that information,
- the dispute shall be treated for the purposes of subsection (2) as not referred to the Authority until the information is provided.”.