

EXPLANATORY MEMORANDUM TO
THE ENTERPRISE AND REGULATORY REFORM ACT 2013 (AMENDMENT) (GAS
AND ELECTRICITY APPEALS) REGULATIONS 2015

2015 No. 16

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations make consequential amendments to Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (c. 24) in connection with changes to the system for modifications to gas and electricity licences in Northern Ireland made by the Gas and Electricity Licence Modification and Appeals Regulations (Northern Ireland) 2015 (S.R. (N.I.) 2015 No. 1) (“the NI Regulations”).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 These Regulations make amendments to Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (“ERRA”). Part 3 of Schedule 4 deals with the constitution of and procedure for groups of independent panel members of the Competition and Markets Authority (“the CMA”) carrying out functions of the CMA, including functions in respect of appeals and references from decisions of utility regulators. The amendments to Schedule 4 are consequential on changes made by the NI Regulations.

4.2 The NI Regulations amend the existing powers of the Northern Ireland Authority for Utility Regulation (“NIAUR”) to modify the licence conditions of gas and electricity licensees. The NI Regulations replace the existing powers and procedures in the Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I.2)) (“the Gas Order”) and the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)) (“the Electricity Order”), to permit NIAUR to make modifications to gas and electricity licences without consent, but subject to a right of appeal to the CMA for specified parties.

4.3 The NI Regulations implement requirements of 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 and repealing Directive 2003/54/EC (“the Electricity Directive”) and 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”). In particular, Article 37(17) of the Electricity Directive and Article 41(17) of the Gas Directive require the provision of an appropriate appeals mechanism. The Electricity Directive and Gas Directive are part of a package of European Union energy measures collectively referred to as the “Third Package”.

4.4 A similar regime for electricity and gas licence modifications was introduced for Great Britain by the Electricity and Gas (Internal Markets) Regulations 2011 (SI 2011/2704).

4.5 As the NI Regulations replace regulatory references to the CMA with a new appeals procedure, consequential amendments are required to Schedule 4 to ERA in connection with the constitution of groups to hear the appeals and membership of the CMA panel.

4.6 The Regulations are being made under section 2(2) of the European Communities Act 1972 as the amendments made under them are consequential upon changes to the Northern Ireland legal framework which implement obligations under EU law. However, as the Regulations do not themselves directly transpose any European requirements, no transposition note has been prepared.

4.7 The amendments to Schedule 4 to ERA are being made by regulations made by the Secretary of State and not under the NI Regulations so that the amendments (like Schedule 4 itself) will have UK wide effect. If they had been included in the NI Regulations, then they could only have had effect in relation to Northern Ireland and that was considered legislatively undesirable.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Parliamentary Under-Secretary of State for Employment Relations and Consumer Affairs has made the following statement regarding Human Rights:

In my view the provisions of the Enterprise and Regulatory Reform Act 2013 (Amendment) (Gas and Electricity Appeals) Regulations 2015 are compatible with the Convention rights.

7. Policy background

7.1 The changes to the Northern Ireland regime made by the NI Regulations are required to implement fully obligations under the EU Third Package Directives – and specifically to ensure that NIAUR can take autonomous decisions; is functionally

independent and able to carry out its regulatory duties in an efficient and expeditious manner; and that suitable mechanisms exist at national level under which a party affected by a decision of a regulatory authority has a right of appeal.

7.2 The changes will also bring the system in Northern Ireland into line with the arrangements that operate in the rest of the United Kingdom.

7.3 This Instrument makes minor amendments to Schedule 4 to ERRA which are consequential on the changes made by the NI Regulations. Part 3 of Schedule 4 deals with the constitution of and procedure for groups of independent panel members of the CMA carrying out functions of the CMA, including functions in respect of appeals and references from decisions of utility regulators. In particular, the amendments ensure that there will be members of the CMA panel appointed in order to hear appeals from decisions of NIAUR in respect of gas and electricity licence modifications in Northern Ireland and that references to regulatory references in connection with decisions of NIAUR are removed.

Consolidation

7.4 The Regulations make only minor amendments to recently enacted primary legislation so consolidation would not be appropriate.

8. Consultation outcome

8.1 The changes to the Northern Ireland regime have been the subject of considerable public consultation by the Northern Ireland Department of Enterprise, Trade and Investment (DETI). The Northern Ireland consultation addressed the proposed consequential changes to Schedule 4 to ERRA. The various Northern Ireland consultations can be accessed via the following link:

http://www.detini.gov.uk/index/what-we-do/deti-energy-index/deti-energy-consultations/consultation_on_legislative_proposals_for_energy_licence_modifications_and_appeals.htm

The outcome of the most recent consultation on the legislative proposals which concluded in March 2014 can be accessed at:

http://www.detini.gov.uk/index/what-we-do/deti-energy-index/deti-energy-electricity/energy_publications_2014_onwards/revised_procedure_for_energy_licence_modifications_and_appeals_outcome_of_consultation_2014_.htm

9. Guidance

9.1 No guidance is required in respect of these Regulations, which are consequential in nature.

10. Impact

10.1 DETI has published an impact assessment for the substantive changes to the regime.
http://www.deti.gov.uk/index/what-we-do/deti-energy-index/deti-energy-publications/final_regulatory_impact_etc.htm

11. Regulating small business

11.1 This Instrument amends Schedule 4 to ERRA which concerns the constitution of the CMA and does not therefore apply to small business.

12. Monitoring & review

12.1 This Instrument makes consequential amendments only.

13. Contact

Stephen Childerstone at the Department for Business, Innovation and Skills; Telephone: 0207-215 0354; or email: stephen.childerstone@bis.gsi.gov.uk can answer any queries regarding the instrument.