
STATUTORY RULES OF NORTHERN IRELAND

2011 No. 155

**The Gas and Electricity (Internal Markets)
Regulations (Northern Ireland) 2011**

PART VI

NATIONAL REGULATORY AUTHORITY

Designation of the Authority as the national regulatory authority for Northern Ireland

35. After Article 3 (The Northern Ireland Authority for Energy Regulation) of the Energy Order there shall be inserted the following Article—

“Designation of Authority as national regulatory authority for Northern Ireland

3A.—(1) The Authority is designated as the national regulatory authority for Northern Ireland in accordance with Article 35(3) of the Electricity Directive and Article 39(3) of the Gas Directive.

(2) The Authority shall ensure that its staff do not—

- (a) seek or take any instructions that might compromise, or might reasonably be seen to compromise, the Authority’s independence in relation to its functions as designated regulatory authority for Northern Ireland; or
- (b) carry out any other activity, or have any financial or other interest, that might compromise, or might reasonably be seen to compromise, the Authority’s independence in relation to those functions.

(3) The Authority may make representations to the regulatory authority for Great Britain designated under section 3A of the Utilities Act 2000 about matters to be discussed or decided at any meeting of the Board of Regulators of the Agency; and whenever the Authority receives from that regulatory authority any documents or other information related to any such meeting, the Authority shall consider whether or not to do so.”.

Annual reports and implementation of binding decisions

36. After Article 6 of the Energy Order there shall be inserted the following Articles—

“Report on activities as designated regulatory authority

6A.—(1) The Authority shall, each year, prepare a report (the “regulatory authority report”) on the activities it has carried out in the preceding 12 months in its capacity as designated regulatory authority for Northern Ireland.

(2) The regulatory authority report shall include, in particular, a general survey of the steps taken and results achieved by the Authority in the performance of its functions under Article 37 of the Electricity Directive and Article 41 of the Gas Directive.

(3) In preparing the regulatory authority report, the Authority shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that individual or body.

(4) The first regulatory authority report shall be prepared by 1st July 2012.

(5) Subsequent regulatory authority reports shall be prepared by 1st July each year.

(6) As soon as is practicable after preparing a regulatory authority report, the Authority shall—

(a) send a copy of it to—

(i) the Department;

(ii) the European Commission; and

(iii) the Agency; and

(b) publish it in such manner as the Authority considers appropriate for bringing it to the attention of others who may be interested in it.

Decisions of the Agency for the Cooperation of Energy Regulators and of the European Commission

6B. The Authority shall carry out its functions in the manner that it considers is best calculated to implement, or to ensure compliance with, any binding decision of the Agency or the European Commission made under the Electricity Directive, the Gas Directive, the Electricity Regulation, the Gas Regulation or the Agency Regulation.”.

Duty on the Authority to publish guidance for consumers

37. After Article 7(4) of the Energy Order there shall be inserted the following paragraphs—

“(5) The Authority shall—

(a) prepare and keep under review, with a view to making any necessary changes, guidance for consumers of gas and electricity which:

(i) addresses all matters included in any document published by the European Commission pursuant to Article 3(16) of the Electricity Directive and Article 3(12) of the Gas Directive; and

(ii) may include any other information relating to the rights of the consumers which the Authority considers appropriate;

(b) consult the Council when preparing and keeping under review the guidance referred to in paragraph (a); and

(c) publish that guidance by making it available on its website and any other manner as the Authority considers appropriate for the purpose of bringing it to the attention of the consumers and others likely to be interested.

(6) The first such guidance shall be published on or before 1st December 2011.”.

Duty on the Authority to consult and co-operate with other authorities

38. After Article 8 of the Energy Order there shall be inserted the following Article—

“Duty on the authority to have regard to the need for consultation and co-operation with other authorities

8A.—(1) When carrying out its functions as designated regulatory authority for Northern Ireland, the Authority shall, to the extent it considers necessary, consider whether there is a need to—

- (a) consult and co-operate with the Agency or the designated regulatory authorities of Great Britain or other Member States;
- (b) provide the Agency or the designated regulatory authorities of Great Britain or other Member States with information they may require in order to carry out their functions under the Electricity Directive, the Gas Directive, the Electricity Regulation, the Gas Regulation or the Agency Regulation; and
- (c) consult relevant national authorities.

(2) In meeting its duty under paragraph (1) the Authority shall, wherever it thinks fit, co-operate with the designated regulatory authorities of Great Britain or other Member States within a regions with a view to achieving, within that region, compliance with those requirements of the Third Package which apply in relation to regions to provide for regional co-operation.

(3) In this Article.—

“region” means—

- (a) in relation to electricity, any geographical area defined in accordance with Article 12(3) of the Electricity Regulation which includes Northern Ireland; and
- (b) in relation to gas, any geographical area defined in accordance with Article 12(3) of the Gas Regulation which includes Northern Ireland;

“relevant national authority” means any of the following—

- (a) the Competition Commission;
- (b) the Office of Communications; and
- (c) the Office of Fair Trading.

(4) The provisions of this Article are without prejudice to any provision of the SEM Order.”.

Amendment of the Authority’s principal objective in relation to electricity

39. After Article 12(1) of the Energy Order, there shall be inserted the following paragraph—

“(1A) The interests of consumers include their interests in the fulfilment by the Authority, when carrying out its functions as designated regulatory authority for Northern Ireland, of the objectives set out in Article 36(a) to (h) of the Electricity Directive.”.

40. In Article 13(2)(b) of the Energy Order, after “Article 8” there shall be inserted “and Article 8A”.

Amendment of the Authority’s principal objective in relation to gas

41. For Article 14(1) of the Energy Order there shall be substituted the following paragraph—

“(1) The principal objective of the Department and the Authority in carrying out their respective gas functions is to promote the development and maintenance of an efficient, economic and co-ordinated gas industry in Northern Ireland, and to do so in a way that is consistent with the fulfilment by the Authority, pursuant to Article 40 of the Gas Directive, of the objectives set out in paragraphs (a) to (h) of that Article.”

42. In Article 15(2)(b) of the Energy Order, after “Article 8” there shall be inserted “and Article 8A”.

Amendment to provision dealing with reasons for decisions

43. In Article 62 of the Energy Order, after paragraph(1)(f) there shall be inserted the following sub-paragraph—

“(g) any other decision of the Authority when carrying out its functions as designated regulatory authority for Northern Ireland.”.

44. In Article 62(3) of the Energy Order, after “(f)” there shall be inserted “or (g)”.

Amendments to Schedule 1 to the Energy Order – Members of the Authority

45. In Schedule 1 to the Energy Order—

(a) after paragraph 2 there shall be inserted the following paragraph—

“2A. A person holding office as chairman or other member shall not—

(a) carry out any activity or have any financial or other interest that might compromise or might reasonably be seen to compromise that person’s impartiality; or

(b) seek or take any instructions from any person or body that might compromise or might reasonably be seen to compromise the independence of the Authority when the Authority is carrying out functions in its capacity as national regulatory authority for Northern Ireland.”; and

(b) for paragraph 3 there shall be substituted the following paragraph—

“3.—(1) No person shall be appointed to hold office as chairman or other member for a term of less than 5 years or for a term of more than 7 years.

(2) If a person who is on the Authority’s staff, is appointed as chairman or other member, the Department of Finance and Personnel may make the appointment subject to the condition that the appointment will end if that person ceases to be on the Authority’s staff.

(3) The appointment of a person as chairman or other member may be renewed only once.

(4) To ensure continuity of the functioning of the Authority, the Department of Finance and Personnel shall ensure that there is a rotation of the Authority’s membership. To do this, that Department shall appoint members so that their terms of office will not all expire at the same time.

(5) A person holding office as chairman or other member may resign that office by giving notice in writing to the Department of Finance and Personnel.

(6) A person holding office as chairman or other member may only be removed from office by the Department of Finance and Personnel, and on one of the following grounds only—

(a) a breach of paragraph 2A;

(b) incapacity; or

(c) misbehaviour.”.

Amendment to the Energy Order

46. In Article 6(3) of the Energy Order, for the words “general directions” there shall be substituted the word “guidance”.

Amendments to the Electricity Order – Grant of electricity licences

47. In Article 10(1) of the Electricity Order, for the words “Department after consultation with the Director, or the Director with the consent of, or in accordance with a general authority given by, the Department,” there shall be substituted the word “Authority”.

48. In Article 10(2A) of the Electricity Order, for the word “grantor” there shall be substituted the word “Authority”.

49. In Article 10(4) of the Electricity Order—

- (a) in the first line for the words “the Department or the Director” there shall be substituted the words “the Authority”; and
- (b) in paragraph (a) for the words “the Department or the Director, as the case may require,” there shall be substituted the words “the Authority”.

50. In Article 10(5) of the Electricity Order, for the words “the Department or the Director” there shall be substituted the words “the Authority”.

51. Article 10(7) of the Electricity Order shall be omitted.

52. After Article 11A of the Electricity Order there shall be inserted the following Article—

“Standard conditions of licences

11AA.—(1) Such conditions as may be determined by the Department, and published by it in such manner as it considers appropriate, in relation to licences under sub-paragraph (a), (b), (bb), (c) or (d) of Article 10(1), shall be standard conditions for the purposes of licences under that sub-paragraph.

(2) The standard conditions for the purposes of licences under sub-paragraph (a), (b), (bb), (c) or (d) of Article 10(1) may contain provision—

- (a) for any standard condition included in such a licence not to have effect until brought into operation in such manner and in such circumstances as may be specified in or determined under the standard conditions;
- (b) for the effect of any standard condition included in such a licence to be suspended in such manner, and in such circumstances, as may be so specified or determined; or
- (c) for any standard condition included in such a licence which is for the time being suspended to be brought back into operation in such manner and in such circumstances as may be so specified or determined.

(3) Subject to paragraph (5) and Article 14(1)(b), each condition which by virtue of paragraph (1) is a standard condition for the purposes of licences under sub-paragraph (a), (b), (bb), (c) or (d) of Article 10(1) shall be incorporated (that is to say, incorporated by reference, or in the case of a licence in force at the time of any determination under paragraph (1), deemed to be incorporated by reference) in each licence under that sub-paragraph.

(4) The modification under Article 14(1)(b) of a condition of a licence shall not prevent so much of the condition as is not modified being regarded as a standard condition for the purposes of this Part.

(5) In relation to a licence in force at the time of any determination under paragraph (1), except with the consent of the licence holder, paragraph (3) shall not have effect in relation to a particular standard condition or part thereof if the effect of paragraph (3) would be to modify the conditions of that licence.”.

53. Paragraph (1) of Article 14 of the Electricity Order shall be substituted with the following paragraph—

- “(1) Subject to the following provisions of this Article, the Authority may—
- (a) modify the conditions of a licence if the licence holder consents to the modifications;
 - (b) in granting a licence, modify any of the standard conditions to such extent as the Authority considers requisite to meet the circumstances of the particular case; or
 - (c) modify the standard conditions of licences under sub-paragraph (a), (b), (bb), (c) or (d) of Article 10(1).”.

54. After paragraph (4) of Article 14 of the Electricity Order there shall be inserted the following paragraphs—

- “(5) The Authority shall not make any modifications of standard conditions under paragraph 1(c) unless—
- (a) no licence holder whose licence incorporates the standard conditions (a “relevant licence holder”) has objected, within the period specified under paragraph (2)(c), to the modifications, unless any such objection has been withdrawn; or
 - (b) the Authority is of the opinion that—
 - (i) the effect of the standard conditions is such as to impose a burden affecting relevant licence holders in the carrying out of activities to which the modifications relate;
 - (ii) the modifications would remove or reduce the burden without removing any necessary protection; and
 - (iii) the modifications are such that no relevant licence holder would be unduly disadvantaged in competing with other relevant licence holders.
- (6) Where at any time the Authority modifies standard conditions under paragraph (1) (c) for the purposes of their incorporation in licences under sub-paragraph (a), (b), (bb), (c) or (d) of Article 8(1) granted after that time, it shall publish the modifications in such manner as it considers appropriate.”.

Authority’s dispute resolution functions in relation to electricity

55. For paragraph (1) of Article 31A of the Electricity Order there shall be substituted the following paragraph—

- “(1) Any person may make a complaint under this Article (hereinafter referred to as “a complaint”) if—
- (a) the subject matter of the complaint constitutes a dispute between the complainant and—
 - (i) the holder of a transmission licence;
 - (ii) the holder of a distribution licence; or
 - (iii) a distribution exemption holder;
 - (b) it is wholly or mainly a complaint against that holder regarding an obligation imposed upon him pursuant to the Directive; and

- (c) the subject matter of the complaint—
 - (i) does not fall to be dealt with under Article 26 or Article 42A; and
 - (ii) is not capable of being determined pursuant to any other provision of this Order.”.

Amendment to the Electricity Order

56. In Article 50(2) of the Electricity Order for the words “give general directions” there shall be substituted the words “issue guidance”.

Authority’s monitoring functions in relation to electricity

57. After Article 50(3A) of the Electricity Order there shall be inserted the following paragraph—

“(3B) the activities to which paragraph (1) applies include, in particular, the matters specified in the following provisions of the Directive as matters to be monitored—

- (a) Article 26(3);
- (b) Article 37(1)(g) to (k), (m) and (q) to (t); and
- (c) where an independent system operator has been designated under Article 10H of this Order, Article 37(3)(a), (b) and (f).”.

Amendments to the Gas Order – grant of gas licences

58. In Article 8(1) and (2) of the Gas Order, for the words “Department after consultation with the Director, or the Director with the consent of, or in accordance with a general authority given by, the Department,” there shall be substituted the word “Authority”.

59. In Article 8(4) of the Gas Order—

- (a) in the first line for the words “the Department or the Director” there shall be substituted the words “the Authority”; and
- (b) in sub-paragraph (a) for the words “the Department or the Director, as the case may require,” there shall be substituted the words “the Authority”.

60. In Article 8(6) of the Gas Order, for the words “the Department or Director” there shall be substituted with the words “the Authority”.

61. In Article 8(7) of the Gas Order for the words “the Department or the Director” there shall be substituted with the words “the Authority”.

62. In Article 8(7A) of the Gas Order, the words “the Department or” and the words “Department or” shall be omitted where and in the order they appear and the words “, as the case may be,” shall also be omitted.

63. In Article 11(2) of the Gas Order, in the first line for the words “paragraph (3)” there shall be substituted the words “Article 14(1)(aa)”.

64. Paragraph (3) of Article 11 of the Gas Order shall be omitted.

65. In Article 11(4) of the Gas Order, in the first line for the words “paragraph (3)” there shall be substituted the words “Article 14(1)(aa)”.

66. In Article 14(1) of the Gas Order, at the end of paragraph (a) there shall be omitted the word “or” and there shall be inserted the following sub-paragraph—

“(aa) in granting a licence, modify any of the standard conditions to such extent as the Authority considers requisite to meet the circumstances of the particular case; or”.

Amendments to the Gas Order

67. In Article 27(2) of the Gas Order for the words “give general directions” there shall be substituted with the words “issue guidance”.

68. In Article 30(2) of the Gas Order the words “, with the consent of the Department,” shall be omitted.

Authority’s monitoring functions in relation to gas

69. After Article 27(3A) of the Gas Order there shall be inserted the following paragraph—

“(3B) The activities to which paragraph (1) applies include, in particular, the matters specified in the following provisions of the Directive as matters to be monitored—

- (a) Article 26(3);
- (b) Article 41(1)(g) to (k), (m), (n) and (r) to (t);
- (c) where an independent system operator has been designated under Article 8H of this Order, Article 41(3)(a) and (b); and
- (d) where a person has been certified on the basis of the third certification ground (independent transmission operator) in Article 8F and designated as a gas transmission operator under Article 8H of this Order, Article 41(5)(b) and (d); and
- (e) Article 41(9).”.

Authority’s dispute resolution functions in relation to gas

70. For Article 27A(1) of the Gas Order there shall be substituted the following paragraph—

“**27A.—**(1) Any person may make a complaint under this Article (hereinafter referred to as “a complaint”) if—

- (a) the subject matter of the complaint constitutes a dispute between the complainant and—
 - (i) a person holding a licence under Article 8(1)(a);
 - (ii) a person holding a licence under Article 8(1)(b);
 - (iii) a gas conveyance exemption holder; or
 - (iv) a gas storage exemption holder;
- (b) it is wholly or mainly a complaint against that holder regarding an obligation imposed on him pursuant to the Directive; and
- (c) the subject matter of the complaint is not capable of being determined pursuant to any other Article of this Order or any condition of the licence held by the holder.”.