

This Statutory Instrument has been printed in substitution of the SI of the same number and is being issued free of charge to all known recipients of that Statutory Instrument.

STATUTORY INSTRUMENTS

2009 No. 1349

GAS

ELECTRICITY

The Gas and Electricity (Dispute Resolution) Regulations 2009

<i>Made</i>	- - - -	<i>1st June 2009</i>
<i>Laid before Parliament</i>		<i>4th June 2009</i>
<i>Coming into force</i>	- -	<i>29th June 2009</i>

The Secretary of State, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to measures relating to natural gas and oil(b) and measures relating to the regulation of the electricity sector(c), makes the following Regulations in exercise of the powers conferred by section 2(2) of that Act:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Gas and Electricity (Dispute Resolution) Regulations 2009 and shall come into force on 29th June 2009.

(2) These Regulations do not extend to Northern Ireland.

Article 25 Disputes (amendment of the Gas Act 1986)

2. After section 27A of the Gas Act 1986(d) insert—

“Article 25 Disputes

27B Meaning of “Article 25 dispute”

(1) For the purposes of sections 27C and 27D a dispute is an “Article 25 dispute” if—

- (a) it is wholly or mainly a dispute with respect to an issue mentioned in Article 19 or paragraph 1, 2 or 4 of Article 25 of the 2003 Directive; and
- (b) it arises from a written complaint made against—
 - (i) a gas transporter,
 - (ii) the holder of a licence under section 7ZA (licences for operation of gas interconnectors), or
 - (iii) the owner of an LNG import facility to which section 19D applies,

(a) 1972 c.68.
(b) S.I. 2000/738.
(c) S.I. 1998/745.
(d) 1986 c.44. Section 27A was inserted by section 10(1) of, and paragraph 26 of schedule 3 to, the Gas Act 1995 (c.45).

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 a failure to make a modification) of—
 - (i) a term or condition of a relevant 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 and section 27C—
- “the 2003 Directive” means Directive 2003/55/EC of the European Parliament and of the Council concerning common rules for the internal market in natural gas;
- “household customer” has the meaning given by Article 2(25) of the 2003 Directive;
- “LNG import facility” has the meaning given in section 19E(1);
- “owner”, in relation to an LNG import facility, includes any person occupying or having control of the facility;
- “relevant licence” means a licence under section 7(2) or 7ZA.

27C Determination of disputes

(1) An Article 25 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 25 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.

(3) The practice and procedure to be followed in connection with an Article 25 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) In the case of—
- (a) a gas transporter, or
 - (b) the holder of a licence under section 7ZA,

sections 28 to 30F and 38 shall have effect as if references in those sections to a relevant requirement (other than the reference in section 28(8)) included references to any duty or other requirement imposed on that person by an order under this section.

(9) In the case of the owner of an LNG facility to which section 19D applies, section 22 shall have effect as if the directions referred to in that section as “relevant directions” included any duty or other requirement imposed on that person by an order under this section.

27D Time limit for determinations

(1) An order determining an Article 25 dispute (whether made under section 27C 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), 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) 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 25 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.”.

Article 23 Disputes (amendment of the Electricity Act 1989)

3. After section 44A of the Electricity Act 1989(a) 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.

(a) 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) 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.

(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.”.

Revocation of exemptions (amendment of the Gas Act 1986 and Petroleum Act 1998)

4. In each of sections 19A(a) and 19C(b) of the Gas Act 1986 and section 17C of the Petroleum Act 1998(c), for subsection (4) substitute—

“(4) An exemption may contain provision for its revocation.”.

1st June 2009

Mike O'Brien
Minister of State,
Department of Energy and Climate Change

-
- (a) Section 19A was inserted by regulation 2 of, and Schedule 2 to, the Gas (Third Party Access and Accounts) Regulations 2000 (S.I. 2000/1937). Subsection (4) was amended by regulation 2 of, and Schedule 2 to, the Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043).
 - (b) Section 19C was inserted by regulation 2 of, and Schedule 2 to, the Gas (Third Party Access and Accounts) Regulations 2000 (S.I. 2000/1937). Subsection (4) was amended by regulation 2 of, and Schedule 2 to, the Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043).
 - (c) 1998 c.17. Section 17C was inserted by regulation 2 of, and Schedule 4 to, the Gas (Third Party Access and Accounts) Regulations 2000 (S.I. 2000/1937).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Article 23(5) of Directive 2003/54/EC of the European Parliament and of the Council concerning common rules for the internal market in electricity and Article 25(5) of Directive 2003/55/EC of the European Parliament and of the Council concerning common rules for the internal market in natural gas.

The regulations also amend sections 19A and 19C of the Gas Act 1986 and section 17C of the Petroleum Act 1998. Those sections provide for exemption from the third party access requirements set out in sections 19B and 19D of the Gas Act 1986 and section 17D of the Petroleum Act 1998. Prior to this amendment the Gas and Electricity Markets Authority (“the Authority”) had, in all cases, the ability to revoke an exemption on 4 months notice for any reason. The effect of the amendments is to no longer permit this whilst retaining the Authority’s power to include specific provision for revocation in an exemption.

© Crown copyright 2009

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty’s Stationery Office and Queen’s Printer of Acts of Parliament.

This Statutory Instrument has been printed in substitution of the SI of the same number and is being issued free of charge to all known recipients of that Statutory Instrument.

STATUTORY INSTRUMENTS

2009 No. 1349

GAS

ELECTRICITY

The Gas and Electricity (Dispute Resolution) Regulations 2009

£5.50