

## STATUTORY INSTRUMENTS

### 2003 No. 419

## The Energy (Northern Ireland) Order 2003

### PART II

#### NEW REGULATORY ARRANGEMENTS

##### *The Northern Ireland Authority for Energy Regulation*

#### **The Northern Ireland Authority for Energy Regulation**

**3.**—(1) There shall be a body corporate to be known as the Northern Ireland Authority for Energy Regulation (in this Order referred to as “the Authority”) for the purpose of carrying out—

- (a) functions transferred to the Authority from the Director General of Gas for Northern Ireland and the Director General of Electricity Supply for Northern Ireland; and
- (b) the other functions of the Authority under this Order.

(2) The functions of the Authority are performed on behalf of the Crown.

(3) The expenses of the Authority shall be defrayed out of money appropriated for that purpose by Act of the Assembly.

(4) The offices of Director General of Gas for Northern Ireland and Director General of Electricity Supply for Northern Ireland are abolished.

(5) Schedule 1 has effect with respect to the Authority.

#### **Modifications etc. (not altering text)**

- C1** [Art. 3](#) modified (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), **3(1)(2)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

VALID FROM 15/04/2011

#### **[<sup>F1</sup>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

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(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.]

**F1** [Art. 3A](#) inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), [reg. 35](#)

### **Transfer to Authority of functions, property, etc. of Directors**

**4.—(1)** The functions, property, rights and liabilities of the Director General of Gas for Northern Ireland and the Director General of Electricity Supply for Northern Ireland ( “the Directors”) are transferred to the Authority.

(2) Any statutory provision or any document which—

(a) refers to either of the Directors; and

(b) was passed or made before the transfer effected by paragraph (1),

shall have effect after the transfer, so far as necessary for the purposes of or in consequence of the transfer, as if references to the Director were references to the Authority.

(3) Anything which —

(a) has been done by or in relation to either of the Directors for the purpose of or in connection with anything transferred by this Article; and

(b) is in effect immediately before it is transferred,

shall be treated as if done by or in relation to the Authority.

(4) Anything (including legal proceedings) which—

(a) relates to anything transferred; and

(b) is in the process of being done by or in relation to either of the Directors immediately before it is transferred,

may be continued by or in relation to the Authority.

(5) Nothing in this Article affects the validity of anything done by or in relation to either of the Directors before the transfer takes effect.

### **Forward work programme of the Authority**

**5.—(1)** The Authority shall, before each financial year, publish a document (the “forward work programme”) containing a general description of the projects, other than those comprising routine activities in the exercise of its functions, which it plans to undertake during the year.

(2) That description shall include the objectives of each project.

(3) The forward work programme for any year shall also include an estimate of the overall expenditure which the Authority expects to incur during the year in the exercise of its functions.

(4) Before publishing the forward work programme for any year, the Authority shall give notice—

(a) containing a draft of the forward work programme; and

- (b) specifying the time within which representations or objections to the proposals contained in it may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(5) The notice under paragraph (4) shall be published by the Authority in such manner as it considers appropriate for the purpose of bringing the matters contained in it to the attention of persons likely to be affected by them.

### **Annual and other reports of Authority**

6.—(1) The Authority shall, as soon as practicable after the end of each financial year, make to the Department of Enterprise, Trade and Investment (in this Order referred to as “the Department”) a report (the “annual report” for that year) on—

- (a) its activities during that year; and
- (b) the activities of the Competition Commission during that year in respect of any references made by the Authority.

(2) The annual report for each year shall include—

- (a) a general survey of developments in respect of matters falling within the scope of the Authority's functions;
- (b) a report on the progress of the projects described in the forward work programme for that year;
- (c) a summary of final and provisional orders made, and penalties imposed, by the Authority under Part VI during the year; and
- (d) a report on such other matters as the Department may from time to time require.

(3) The annual report for each year shall set out any general directions given by the Department under—

- (a) Article 50(2) of the Electricity (Northern Ireland) Order 1992 (NI 1) (in this Order referred to as “the Electricity Order”); or
- (b) Article 27(2) of the Gas (Northern Ireland) Order 1996 (NI 2) (in this Order referred to as “the Gas Order”).

(4) The Department shall consult the Authority before exercising the power under paragraph (2) in relation to any matter.

(5) The Department shall—

- (a) lay a copy of each annual report before the Assembly; and
- (b) arrange for the report to be published in such manner as the Department considers appropriate.

(6) The Authority shall also make to the Department such reports with respect to the matters mentioned in paragraph (2)(a) or (b) as the Department may require and the Authority shall, if the Department so directs, arrange for copies of any report under this paragraph to be published in such manner as is specified in the direction.

(7) The Authority may also prepare other reports with respect to any matter falling within the scope of its functions and may arrange for any such report to be published in such manner as it considers appropriate.

(8) The Authority shall send—

- (a) a copy of each annual or other report published under this Article to the General Consumer Council for Northern Ireland (in this Order referred to as “the Council”); and
- (b) a copy of each report under paragraph (7) to the Department.

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(9) In making or preparing any report under this Article 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.

(10) Paragraph 12A of Schedule 7 to the Competition Act 1998 (c.41) (annual reports of Competition Commission) does not apply to activities of the Competition Commission on which the Authority is required to report under this Article.

VALID FROM 15/04/2011

### [<sup>F2</sup>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.

**F2** Arts. 6A, 6B inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), [reg. 36](#)

VALID FROM 15/04/2011

### 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.]

**F2** Arts. 6A, 6B inserted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), reg. 36

### **Publication by Authority of advice and information about consumer matters**

7.—(1) If it appears to the Authority that the publication of any advice and information would promote the interests of consumers in relation to gas or electricity supplied by authorised suppliers, the Authority may publish that advice or information in such manner as it thinks fit.

(2) In publishing advice or information under this Article 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.

(3) Before deciding to publish under this Article any advice or information relating to a particular individual or body of persons the Authority shall consult that individual or body.

(4) The Office of Fair Trading shall consult the Authority before publishing under section 6 of the Enterprise Act 2002 (c.40) any information or advice which may be published by the Authority under this Article.

### **Powers of Authority in relation to external matters**

8.—(1) The Authority may liaise, co-operate and enter into arrangements with relevant persons in—

- (a) any other part of the United Kingdom;
- (b) any other member State;
- (c) any other State in which there is a gas pipe-line or electricity transmission system which is or may be connected (directly or indirectly) to a gas pipe-line or electricity transmission system in Northern Ireland.

(2) In paragraph (1) “relevant persons” means—

- (a) persons exercising functions in relation to electricity or gas which correspond to any of those of the Authority or the Department; and
- (b) persons whose activities consist of or include—
  - (i) generating, supplying or participating in the transmission of electricity; or
  - (ii) storing, supplying or participating in the conveyance of gas.

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

[<sup>F3</sup>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—

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- (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.]

**F3** Art. 8A inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 38**

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